TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 480

SAINT JOSEPH TOWNSHIP, CHAMPAIGN COUNTY, PLAINTIFF IN ERROR,

vs.

JAMES ROGERS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED DECEMBER 5, 1871.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of Illinois, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between James Rogers, plaintiff, and Saint Joseph Township, Champaign County, Illinois, defendant, a manifest error hath happened, to the great damage of the said Saint Joseph Township, Champaign County, Illinois, as by its complaint appears: We, being willing that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the
2 first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, this twenty-first day of June, in the year of our Lord one thousand eight hundred and seventy-one, and of our independence the ninety-fifth year.

[SEAL.]

J. A. JONES,
Clerk of the Circuit Court of the United States for the Southern District of Illinois.

3 Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. Samuel H. Treat, district judge of said district, and in the absence of the Hon. Thomas Drummond, judge of the seventh judicial circuit, on Wednesday, the fourteenth day of June, at the June term of said court, in the year of our Lord one thousand eight hundred and seventy-one, and of our independence the ninety-fifth year.

J. A. JONES, *Clerk.*

JAMES ROGERS
vs.
ST. JOSEPH TOWNSHIP, CHAMPAIGN COUNTY, Illinois. } In assumpsit.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

James Rogers, a citizen of the State of Iowa, plaintiff, puts in his place Messrs. Stuart, Edwards and Brown, his attorneys, against St. Joseph Township, Champaign County, defendant, who puts in its
4 place Messrs. Sweet and Smith, its attorneys, in a plea of trespass on the case on promises.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the eighth day of February, in the year of our Lord one thousand eight hundred and seventy-one, the said plaintiff, by his attorneys, filed in the office of the clerk of

the circuit court of said district, his bond for costs herein; which said bond for costs is in the words and figures following, to wit:

Bond for costs.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

Circuit court, January term, A. D. 1871.

JAMES ROGERS
vs.
ST. JOSEPH TOWNSHIP, CHAMPAIGN COUNTY, Ill's. } In assumpsit.

We do hereby enter ourselves security for costs in this cause, and acknowledge ourselves bound to pay, or cause to be paid, all costs which may accrue in this action, either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State and of the United States.

Dated this 8th day of Feb., 1871.

STUART, EDWARDS & BROWN.

5 (Indorsed:) Filed February 8th, A. D. 1871. J. A. Jones, clerk.

And afterwards, to wit, on said eighth day of February of the year aforesaid, a summons was issued in said entitled cause out of the office of the said circuit clerk, directed and delivered to the marshal of said district to execute; which said summons is in the words and figures following, to wit:

Summons.

Circuit court of the United States, southern district of Illinois, ss:

The United States of America to the marshal of the southern district of Illinois, greeting:

We command you to summon St. Joseph Township, Champaign County, Illinois, if found in your district, to be and appear before our judges of our circuit court of the United States for the southern district of Illinois, on the fifteenth day of February, A. D. 1871, at the January term thereof, now held at Springfield, in the district aforesaid, to answer unto James Rogers, of a plea of trespass on the case upon prom-
6 ises, to his damage, as he alleges, of ten thousand dollars, and have you then there this writ.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Springfield aforesaid, this eighth day of February, in the year of our Lord one thousand eight hundred and seventy-one, and of our independence the ninety-fifth year.

[L. S.] J. A. JONES, *Clerk.*

Which said summons was afterwards, to wit, on the fourteenth day of February of the year aforesaid, returned by the marshal of said district, indorsed in the words and figures following, to wit:

I hereby appoint John W. Hill my special deputy to execute this writ.

Feb'y 8th, 1871.

JOHN L. ROUTT, *U. S. Marshal.*

Served the within writ on Friday, February 10th, 1871, on John L. Smith, supervisor, and John Dressback, town clerk, by reading and leaving a true copy of the within writ with each one.

JOHN L. ROUTT, *U. S. M.*,
By JOHN W. HILL, *Special Deputy.*

(Indorsed:) Filed February 14, A. D. 1871. J. A. Jones, clerk.

7 Then afterwards, to wit, on the fifteenth day of said February of the year aforesaid, came again said plaintiff, by Messrs. Stuart, Edwards and Brown, his attorneys, and filed in said clerk's office his declaration herein; which said declaration is in the words and figures following, to wit:

Declaration.

UNITED STATES OF AMERICA,
Southern District of Ill's, ss:

In the circuit court of the United States of the January term, A. D. 1871.

James Rogers, a citizen of the State of Iowa, the plaintiff in this suit, by Stuart, Edwards & Brown, his attorneys, complain of St. Joseph Township, Champaign County, Illinois, defendant, in custody, a citizen of the State of Illinois, & a corporation existing under and by virtue of the laws of the State of Illinois, of a plea of trespass on the case upon promises.

For that whereas the said defendant, on the 1st day of February, in the year of our Lord one thousand eight hundred and seventy-one, at Champaign Co., Ill's, to wit, in the district aforesaid, was indebted to the said plaintiff in the sum of ten thousand dollars, of lawful
8 money of the United States of America, for divers goods, wares, and merchandises by the said plaintiff before that time sold and delivered to the said defendant, and at the special instance and request of the said defendant, and being so indebted to the said plaintiff, the said defendant in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned when the said defendant should be thereunto afterwards requested.

And whereas, also, the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, in consideration that the said plaintiff had before that time, at the like special instance and request of the said defendant, sold and delivered to the said defendant divers other goods, wares, and merchandises of the said plaintiff, the said defendant then and there undertook and faithfully promised the said plaintiff that the said defendant would well and truly pay to
9 the said plaintiff so much money as the last aforesaid goods, wares, and merchandises at the time of the sale and delivery thereof were reasonably worth, when the said defendant should be thereunto afterwards requested; and the said plaintiff avers that the said

goods, wares, and merchandises last mentioned, at the time of the sale and delivery thereof, were reasonably worth the further sum of ten thousand dollars, of like lawful money as aforesaid, to wit, at the place aforesaid; whereof the said defendant, afterwards, to wit, on the same day and year, and at the place aforesaid, had notice.

And whereas, also, the said defendant, afterwards, to wit, on the same day and year, and at the place aforesaid, was indebted to the said plaintiff in the further sum of ten thousand dollars, of like lawful money as aforesaid, for money before that time lent and advanced by the said plaintiff to the said defendant, and at the like request of the said defendant, and for other money by the said plaintiff before that time paid, laid out, and expended for the said defendant, and at the like request of the said defendant, and for other money by the said defendant
10 before that time had and received to and for the use of the said plaintiff, and, being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said several sums of money in this count mentioned, when the said defendant should be thereunto afterwards requested.

And whereas, also, the said defendant, afterwards, to wit, on the same day and year, and at the place aforesaid, accounted, together with the said plaintiff, of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiff, and then and there being in arrear and unpaid; and, upon such accounting, the said defendant then and there was found to be in arrear and indebted to the said plaintiff in the further sum of ten thousand dollars, of like lawful money as aforesaid, and, being so found in arrear and indebted to the said plaintiff, the said defendant, in consideration
11 thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned, when the said defendant should be thereunto afterwards requested.

Nevertheless, the said defendant, although often requested, &c., has not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff, but to pay the same, or any part thereof to the said plaintiff, the said defendant has hitherto altogether refused, and still do' refuse, to the damage of the said plaintiff of ten thousand dollars; and, therefore, the said plaintiff brings suit, &c.

STUART, EDWARDS & BROWN,
Att'ys for Plaintiff.

(Indorsed:) Filed February 15, 1871. J. A. Jones, cl'k.

Now, afterwards, to wit, on said fifteenth day of February, in the
12 January term of said court, of the year aforesaid, the following proceedings were had in said court in said cause, and entered of record, to wit:

Order of court.

JAMES ROGERS
v.
ST. JOSEPH TOWNSHIP, CHAMPAIGN CO., ILL'S. } In assumpsit.

This day come the parties by their attorneys, and, on motion of defend-

ant, this cause is continued with leave to defendant to plead herein by the 1st day of next term.

Afterwards, to wit, on the fifth day of June, at the June term of said court, of the year aforesaid, came the defendant by its attorneys and filed in said clerk's office its plea herein; which said plea is in the words and figures following, to wit:

Plea.

United States circuit court, southern district of Illinois. June term, 1871.

13 JAMES ROGERS
vs.
SAINT JOSEPH TOWNSH., OF CHAMPAIGN COUNTY, Illinois. } Plea.

And now comes the said defendant by E. L. Sweet and C. B. Smith, its attorneys, and defends the wrong & injury, when & where, &c., and says that it did not undertake and promise to pay in manner and form as the said plaintiff hath alleged in his said declaration against it; and of this it puts itself upon the country, &c.

E. L. SWEET & C. B. SMITH,
Att'ys for Def't.

Pl'ff likewise.

STUART, EDWARDS & BROWN, *P. Q.*

Agreement.

It is hereby agreed by the parties to the above-entitled suit that, upon the trial of the above-entitled cause, the defendants may give in evidence under the general issue any and all matters which might or could be given in evidence under any special plea which could be legally pleaded in the above-entitled suit.

E. L. SWEET & C. B. SMITH,
Att'ys for Defendant.

14 STUART, EDWARDS & BROWN,
For Pl'ff.

(Indorsed:) Filed June 5th, A. D. 1871.

J. A. JONES, *Clk.*

And afterwards, to wit, on the eighth day of June, at the June term of said court of the year aforesaid, the following further proceedings were had in said court, in said cause, and entered of record, to wit:

Order of court.

JAMES ROGERS
vs.
ST. JOSEPH TOWNSHIP, CHAMPAIGN CO., Illinois. } In assumpsit.

This day comes as well the plaintiff by Messrs. Stuart, Edwards and Brown, his attorneys, as the defendant by C. B. Smith, esq., its attorney, and issue being joined, whereupon comes a jury of good and lawful men, to wit: William E. Magill, James C. Winton, O. B. Heistane, James M. Simpson, Warfield Staley, Thomas A. Mustan, Chatlin Kelley,

William H. Hanna, J. A. G. Parker, Lewis C. Bidamon, Daniel
15 Cover, and William O. Griffith, duly elected, tried, and sworn to try said issue, and having heard the evidence and argument of counsel and instructions of the court, retire to consider of their verdict.

Then afterwards, to wit, on the ninth day of said June, in the term and year aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order of court.

JAMES ROGERS
v.
ST. JOSEPH TOWNSHIP, CHAMPAIGN CO., ILL'S. } In assumpsit.

This day come again the parties, as well as the jury impanelled and sworn herein, who having failed to agree upon their verdict take time to consider of the same.

Now, afterwards, to wit, on the fourteenth day of said June, in the term and year aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

16 *Judgment.*

JAMES ROGERS
v.
ST. JOSEPH TOWNSHIP, CHAMPAIGN COUNTY. } In assumpsit.

This day come as well the parties by their attorneys, as the jury impanelled and sworn herein, who for verdict say, "We, the jury, find the issue for the plaintiff, and assess his damages to the sum of four thousand two hundred and ninety-nine dollars and seventy-five cents ($4,299 75.")

Whereupon, the defendant enters its motion for a new trial herein, which being heard by the court is overruled.

It is, therefore, ordered and adjudged that the plaintiff recover of the defendant the said sum of four thousand two hundred and ninety-nine dollars and seventy-five cents, his damages aforesaid assessed by the jury, together with the sum of one hundred and one dollars and fifteen cents his costs and charges by him about his suit in this behalf expended, and that he have execution therefor.

Thereupon the defendant tendered its bill of exceptions, which is signed and sealed and ordered by the court to be made a
17 part of the record herein.

BILL OF EXCEPTIONS.

UNITED STATES OF AMERICA,
State of Illinois, Southern District:

In the circuit court for the southern district of Illinois, June term, A. D. 1871.

JAMES ROGGERS
vs.
SAINT JOSEPH TOWNSHIP, CHAMPAIGN County. } Bill of exceptions.

Be it remembered that, on the trial of the above-entitled cause, at the

June term, A. D. 1871, of the said circuit court for the southern district of Illinois, the plaintiffs, to maintain the issue on his part, gave in evidence to the jury the evidence following, and in the order following, that is to say, first, a bond, of which the following is a true copy, to wit:

Bond.

UNITED STATES OF AMERICA,
State of Illinois, Saint Joseph Township:

No. 6.] RAILROAD BOND. [$500.

Know all men by these presents, that the township of St. Joseph, in the county of Champaign, and State of Illinois, acknowledges itsself to owe and be indebted in the sum of five hundred dollars, lawful money of the United States of America, which sum of money the said township of St. Joseph promises to pay to the order of , at the office of the county treasurer of said county, on the first day of October, in the year one thousand eight hundred and seventy-seven, with interest thereon at the rate of ten per centum per annum, which interest shall be payable yearly on the first day of October on each year, at the office of the treasurer of said county, upon presentation and delivery of the warrants or coupons severally hereto annexed, until the payment of the said principal sum. This bond is issued under and by virtue of a law of the State of Illinois, entitled "An act to amend the articles of association of the Danville, Urbana, Bloomington & Pekin Railroad Company, and to extend the powers of and confer a charter upon the same," approved Feb'y 28th, 1867, and in accordance with the vote of the electors of said township, at the special election held August 14th, 1866, in accordance with said act; and the faith of the township of Saint Joseph is hereby pledged for the payment of the said principal sum and interest as aforesaid.

In witness whereof, the supervisor and clerk of said township of Saint Joseph have subscribed this bond, this first day of October, one thousand eight hundred and sixty-seven.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

And, thereupon, the plaintiff introduced and read in evidence the following-described coupon bonds, which had been detached from the said Saint Joseph Township railroad bonds, and which said coupon bonds are for the interest annually accrued on said railroad bonds, and which said coupon bonds, except as to their numbers, are in the words and figures following, to wit:

Coupon.

1. [No. 1.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1868, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

20 1 [No. 2.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1868, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

1. [No. 3.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1868, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

1. [No. 4.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1868, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

1. [No. 5.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1868, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

21 1. [No. 6.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1868, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

1. [No. 7.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1868, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

1. [No. 8.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1868, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

1. [No. 9.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1868, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W DRULLINGER, *Supervisor.*

22 1. [No. 10.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1868, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Srpervisor.*

1. [No. 11.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1868, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

1. [No. 12.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1868, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

1. [No. 13.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1868, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

23 1. [No. 14.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1868, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

2. [No. 9.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1868, one hundred dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

2. [No. 10.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1868, one hundred dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

2. [No. 11.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1868, one hundred dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

24 2. [No. 12.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1868, one hundred dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

2. [No. 13.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1868, one hundred dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

2. [No. 14.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1869, one hundred dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

3. [No. 1.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1869, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

25 3. [No. 2.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1869, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

3. [No. 3.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1869, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

3. [No. 4.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1869, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

3. [No. 5.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1869, fifty dollars, being one year's interest on bond numbered above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

26 3. [No. 6.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1869, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

3. [No. 7.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1869, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

3. [No. 8.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1869, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

3. [No. 9.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1869, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

27 3. [No. 10.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1869, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

3. [No. 11.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1869, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

3. [No. 12.

St Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1869, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

3. [No. 13.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1869, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

28 3. [No. 14.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1869, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

4. [No. 9.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1869, one hundred dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

4. [No. 10.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1869, one hundred dollars, being one year's interest on bond numbering as above.

JOHN LAIRD, *Clerk.*

H. W. DRULLINGER, *Supervisor.*

4. [No. 11.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1869, one hundred dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULINGER, *Supervisor.*

29 4. [No. 12.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1869, one hundred dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULINGER, *Supervisor.*

4. [No. 13.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1869, one hundred dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULINGER, *Supervisor.*

4. [No. 14.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1869, one hundred dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULINGER, *Supervisor.*

5. [No. 1.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1870, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULINGER, *Supervisor.*

30 5. [No. 2.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1870, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULINGER, *Supervisor.*

5. [No. 3.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1870, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULINGER, *Supervisor.*

5. [No. 4.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1870, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULINGER, *Supervisor.*

5. [No. 5.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1870, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULINGER, *Supervisor.*

31 5. [No. 6.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1870, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULINGER, *Supervisor.*

5. [No. 7.

St. Joseph *County* railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1870, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULINGER, *Supervisor.*

5. [No. 8.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1870, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULINGER, *Supervisor.*

5. [No. 9.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1870, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULINGER, *Supervisor.*

32 5. [No. 10.

St Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1870, fifty dollars, being one year's interest on bond numbering as above.

JOHN LAIRD, *Clerk.*

H. W. DRULINGER, *Supervisor.*

5. [No. 11.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1870, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULINGER, *Supervisor.*

5. [No. 12.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1870, fifty dollars, being one year's interest on bond numbering as above.

JOHN LAIRD, *Clerk.*

H. W. DRULINGER, *Supervisor.*

5. [No. 13

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1870, fifty dollars, being one year's interest on bond numbering as above.

JOHN LAIRD, *Clerk.*

H. W. DRULINGER, *Supervisor.*

33 5. [No. 14.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1870, fifty dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULINGER, *Supervisor.*

6. [No. 9.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1870, one hundred dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULINGER, *Supervisor.*

6. [No. 10.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1870, one hundred dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULINGER, *Supervisor.*

6. [No. 11.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1870, one hundred dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULINGER, *Supervisor.*

34 6. [No. 12.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1870, one hundred dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULINGER, *Supervisor.*

6. [No. 13.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1870, one hundred dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULINGER, *Supervisor.*

6. [No. 14.

St. Joseph Township railroad bond.—Interest warrant.

Treasurer of Champaign County, pay to bearer, October 1st, 1870, one hundred dollars, being one year's interest on bond numbered as above.

JOHN LAIRD, *Clerk.*

H. W. DRULINGER, *Supervisor.*

Statutes.

A.

And thereupon the said plaintiff introduced in evidence the following statutes of the State of Illinois, to wit: Sections 4, 12, 13, & 14 of an act entitled "An act to amend the articles of association of the Dan-

ville, Urbana, Bloomington and Pekin Railroad Company, and
35 to extend the powers of, and confer a charter upon, the same," approved February 28, 1867, which are in the words and figures following, to wit:

SECTION 4. The persons named as commissioners in said articles of association may be removed at any regular meeting of the board of directors, and others appointed in their stead, with the same powers. And the said commissioners shall open books of subscription, from time to time, in each of the cities, incorporated towns, and townships along the route of said road, first giving ten days' notice of the time and place thereof by publication in the newspaper published nearest thereto.

SECTION 12. To further aid in the construction of said road by said company, any incorporated town or townships, in counties acting under the township organization law along the route of said road, may subscribe to the capital stock of said company in any sum not exceeding two hundred and fifty thousand dollars.

SECTION 13. No such subscription shall be made until the ques-
36 tion has been submitted to the legal voters of such incorporation, town, or township in which the subscription is proposed to be made. And the clerk of each of said towns or townships is hereby required, upon the presentation of a petition signed by at least ten citizens, who are legal voters and tax-payers of such town or townships for which he is clerk, and in which petition the amount proposed to be subscribed shall be stated, to post up notices in at least three public places in each town or township, which notice shall be posted not less than thirty days before the day of holding such election, notifying the legal voters of such town or township to meet at the usual place of holding elections in such town or township, or some other convenient place named in such notice, for the purpose of voting for or against such subscription: *Provided*, That where elections may have already been held, and a majority of the legal voters of any township or incorporated town were in favor of a subscription to said railroad, then, and in that case, no other election need be had; and the amount so
37 voted for shall be subscribed as in this act provided; and such elections are hereby declared to be legal and valid, as though this act had been in force at the time thereof, and all the provisions hereof had been complied with.

SECTION 14. If it shall appear that a majority of all the legal voters of such towns or townships, voting at such election, have voted "for subscription," it shall be the duty of the president of the board of trustees, or other chief executive officer, if in incorporated towns, and of the supervisor in townships, to subscribe to the capital stock of said railroad company, in the name of such town or township, the amount so voted to be subscribed, and to receive from said company the proper certificates therefor. He shall also execute to said company, in the name of such town or townships, bonds bearing interest at ten per cent. per annum, which bonds shall run for a term of not more than twenty years, and the interest on the same shall be made payable annually: and which bonds shall be signed by such president, executive officer, or supervisor, and be attested by the clerk of the town or town-
38 ship in whose name the *the* bonds are issued, and it shall be his duty to make out a record of the issuing of said bonds. Said bonds shall be delivered to the president or secretary of said company for the use of said company. And when any city or county shall hereafter vote to make subscription, as aforesaid, the chairman of the board

of supervisors of such county, and the mayor of such city shall be required to subscribe to the capital stock of said company the amount so voted.

And also an act entitled "An act to amend articles of association of the Danville, Urbana, Bloomington and Pekin Railroad Company," and to extend the powers of, and confer a charter upon, the same, approved February 25th, 1869, which is in the words and figures following, to wit:

Preamble.

Whereas certain township officers along the line and through which the Danville, Urbana, Bloomington and Pekin Railroad passes, have failed to keep a full and perfect record of elections called and
39 held, and township clerks have failed to file with the county clerk certificates, as required by section fifteen (15) of the amended articles of association of said railroads; therefore—

SECTION 1. *Be it enacted by the people of the State of Illinois represented in the general assembly*, That where such informalities and neglect may have occurred, and bonds have been issued, or may hereafter be issued, to aid in the construction of said railroad, that no such neglect or omission, on the part of township officers, shall in any way invalidate or impair the collection of said bonds, both principal and interest, as they may respectively fall due, and all assessments that are now made for the payment of the principal or the interest thereon is hereby legalized, and the township collectors and county treasurers are hereby authorized and empowered to enforce the collection and payment of said tax, as is now provided by law for the collection of all other taxes: *Provided*, That this act shall not apply to the town of Danville.

SECTION 2. This act shall be a public act, and take effect from and after its passage.

40 And thereupon the plaintiff rested his cause.

And thereupon the defendant, to maintain the issue on its part, called JOHN LAIRD, who, being first duly sworn, testified as follows, to wit:

Questions by defendant's counsel:

Q. Where do you reside?
A. St. Joseph's Township, Champaign Co.
Q. Where did you reside August, 1860?
A. Where I now live.
Q. How long prior to that time have you lived there?
A. Twelve or fourteen years.
Q. You still reside there?
A. Yes, sir.
Q. State if you were holding any office in 1861.
41 A. I was town clerk; likewise assessor.
Q. I will ask you to tell the court whether any petitions were presented to you with a view to holding an election to let the township subscribe stock to the Danville, Urbana, Bloomington & Pekin Railroad?

COUNSEL FOR THE PLAINTIFF: I want to except to this.

A. There was no petition that I ever saw; I was town clerk, too.
Q. I will ask you to state to the court whether you ever made out or

gave any notice of calling an election for the purpose of issuing these bonds?

A. I did not post any notices of an election.

Q. I will ask you if you ever signed any notice or authorized anybody to sign any notice for that purpose.

A. Not that I recollect of; no, I didn't.

Q. You say you never posted any notices?

42 A. I didn't, sir.

Q. Nor signed any notices, nor authorized anybody else to sign?

A. To the best of my knowledge, no.

Q. Had you posted or signed such notices, would you recollect it?

A. I surely think I would.

Q. What part of the township were you living in?

A. Near the little village they call St. Jo.

Q. How far away?

A. I suppose two hundred yards.

Q. Did you ever see any notices posted up, calling for this railroad election?

A. Well, sir, I was busy assessing; don't recollect; wouldn't say positively.

Q. No recollection of seeing any?

43 A. Couldn't say positively.

Q. Now, you have no recollection?

A. I was busy in my other occupation, and don't recollect whether I saw any or not.

Q. Well, sir, I will ask you whether you were at home?

Q. I will ask you if you were at home on the fourteenth of August, '66?

A. Couldn't say as to that.

Q. Were you at any election authorizing the issue of bonds?

A. No, sir, I wasn't.

Q. Did you hear of any election prior to that time?

A. There was no election on the fourteenth.

COUNSEL FOR PLAINTIFF: The election was held on the fourth—a mere clerrical error.

44 A. The fourth day of August was on Saturday. I went to a neighbor's on that day to get some assistance, but, his wife being unwell, he couldn't do it, and I went back Monday morning.

Q. I will ask you, if any election, the poll-books or tally-lists were ever returned in your office, as the result of such an election?

A. There was nothing put into my hands pertaining to that election in any shape, form, or color.

Q. Nothing whatever relating to this election in any way came into your hands?

A. No, sir; never came into my hands as record, anything of the kind.

Q. State if there was, in the year '66 or '7, any papers, any poll-books, tally-lists, or return-books for record filed in your office?

A. No, sir; no petitions filed, and no record made of any other papers.

Q. Did they never make any returns of this election?

45 A. No returns were made to me.

Q. Were you at that election?

A. I voted at the election in the evening, I suppose.

Q. Do you know how many votes were cast?

A. I received no return of poll-books or tally-lists; don't know how many there were.

Q. Who was supervisor?

A. H. W. Drullinger.

Q. Have you had any conversations with Mr. Drullinger as to the character of that election?

COUNSEL FOR PLAINTIFF: Q. Do you know how many legal voters there were in the township at the time of that election—about how many?

A. Well, I think there was something over two hundred.

46 COUNSEL FOR PLAINTIFF: All this is excepted to.

A. I couldn't say positively; but I think over two hundred.

Cross-examination by Mr. Edwards:

Q. Are you the same John Lai'd who was clerk of the township of St. Jo.? Signed the bonds?

A. I signed the bonds, sir.

Q. Signed the coupons issued by the township?

A. I signed the bonds in several places. I suppose wherever it was necessary.

Q. Those are coupons, (illustrating.) You are the same gentleman who signed those?

A. Yes, sir.

Q. Was there an election held in the township of St. Jo. for the purpose of determining whether twenty-five thousand dollars should be subscribed to the stock of this railroad company?

47 A. There was an election held on the fourth of August, I suppose. That's my recollection, and according to my business at that time.

Q. You voted *voted* at that election?

A. I did, sir.

Q. You said that there never came into your hands any papers for record relating to that election. Have you not recently made a search in your office for papers connected with this election held on the fourth of August?

A. There were never any papers came into my hands. We looked over the town papers.

Q. Did you find a tally-list?

A. I did not. Never saw a tally-list.

Q. Then there are no papers now in your office connected with this election?

A. I have no office.

Q. In your hands?

A. No, sir.

48 Q. You are not township clerk now?

COUNSEL FOR DEFENDANT: We would make an objection. This is not pertinent to the direct examination.

Q. Who is your successor as assessor?

A. John Dreisback.

Q. Who was his successor?

A. William H. Rhodes, present town clerk.

Q. Rhodes was the successor of Dreisback?

A. Well, I don't know exactly; but Pierce came in after me, and then Driesback.

Q. You delivered your papers to your successor—everything connected with your office?

A. I did.

Q. Now you said you didn't sign any notice for this election. Will you swear you did not?

A. I did not, to my recollection.

49 Q. Will you swear you didn't?

A. I didn't, to the best of my recollection.

Q. Did you see any notice posted?

A. Didn't; don't recollect that I did.

Q. Was anybody acting for you?

A. No one.

Q. How did you keep your office without?

A. My office was in 'Squire Tibbit's office. I generally called his attention to all the business transactions. I was green in the business and generally attracted his attention to what I did.

Q. What office did Tibbits hold at that time?

A. He had an office over the store; he had some drugs and medicines.

Q. What office did he hold?

A. Justice of the peace.

50 Q. Did he hold any other office?

A. He was justice of the peace, and of course town auditor.

Re-direct by Mr. Sweet:

Q. You signed these bonds and coupons attached; I will ask under what conditions you signed—what was said at the time?

A. I didn't think it was right to sign all the bonds at one time, for the fact is, it was the understanding of the people of the township that one-third should be signed at a time only.

Q. Was anything said about these bonds; did you sign any protest?

A. I remarked something about their being in a big hurry, to sign all at one time.

51 And thereupon the defendant called J. W. Shuck who, after being sworn, testified as follows:

J. W. SHUCK sworn.

Direct by Mr. Sweet:

Q. Where do you reside—where have you resided the last three or four years?

A. In Urbanna, Champaign County.

Q. What office did you hold in that county?

A. Clerk of the county court.

Q. How long have you been in the clerk's office as deputy-clerk, and so on?

A. I have been clerk myself a little over two years, and have been deputy since June, '65.

Q. Been in the office regularly all that time?

A. Yes, sir.

52 Q. I will ask you if while you were in the county clerk's office, Champaign County, any election returns referring to this subscription of stock came under your notice?

A. No, sir; none.

Q. Never been any returns?

A. No, sir.

Q. Has there been anything at all relative to holding an election on the fourth of August?

A. Nothing from the officers of the township, that I know of; the railroad company filed a certificate.

Q. Did you examine the record to see?

A. Yes, sir, I did; never been able to find anything.

Q. State, if you know, whether this township ever paid any taxes assessed against these bonds?

A. I think some parties have paid the tax.

53 Q. Some citizens?

A. Yes, sir.

Cross-examination by Mr. Edwards:

Q. The township has assessed taxes?

A. The first year the township assessed.

Q. You know the fact that some citizens paid the tax, and that the township did assess the first year?

A. Yes, sir.

Re-direct:

Q. State if there was any railroad tax—if it wasn't all town tax—assessed under that head; as a matter of fact, whether all the tax assessed wasn't assessed under the head of town tax?

A. Yes, sir; under the head of township tax.

Q. Under that head?

54 A. I was going to say there was no certificate on file in my office; had no authority to levy any railroad tax—the supervisor informed me. *A.* The supervisor seemed anxious to make an arrangement to pay interest on these bonds, and he ordered me to levy a tax to pay it; I levied a town tax, as I had no authority to levy a railroad tax.

Q. You don't remember that this was for any other purpose than town purposes—no record of any other?

A. No, sir.

And thereupon the defendant called JOHN L. SMITH who, after being sworn, testified as follows:

By Mr. Sweet:

Q. Where do you reside?

A. St. Jo. Township.

Q. How long there?

55 A. Ten years last March.

Q. Where did you reside in 1866?

A. Right west of the township.

Q. How far west?

A. Two miles.

Q. What office do you hold?

A. Supervisor.

Q. How long have you been holding it?

A. This is the third year.

Q. Successor to whom?

A. George Doyle was Drullinger's successor.

Q. Were you at an election at St. Jo. on the fourth of August for the purpose of subscribing railroad stock to this railroad company in 1866?

A. I was'nt.

56 Q. State if you ever saw any notice calling an election.

A. I did'nt.

Q. Did you ever hear of any notice?

A. I did.

Q. Now you said you didn't sign any notice for this election. Will you swear you did not?

A. I did not, to my recollection.

49 Q. Will you swear you didn't?

A. I didn't, to the best of my recollection.

Q. Did you see any notice posted?

A. Didn't; don't recollect that I did.

Q. Was anybody acting for you?

A. No one.

Q. How did you keep your office without?

A. My office was in 'Squire Tibbit's office. I generally called his attention to all the business transactions. I was green in the business and generally attracted his attention to what I did.

Q. What office did Tibbits hold at that time?

A. He had an office over the store; he had some drugs and medicines.

Q. What office did he hold?

A. Justice of the peace.

50 Q. Did he hold any other office?

A. He was justice of the peace, and of course town auditor.

Re-direct by Mr. Sweet:

Q. You signed these bonds and coupons attached; I will ask under what conditions you signed—what was said at the time?

A. I didn't think it was right to sign all the bonds at one time, for the fact is, it was the understanding of the people of the township that one-third should be signed at a time only.

Q. Was anything said about these bonds; did you sign any protest?

A. I remarked something about their being in a big hurry, to sign all at one time.

51 And thereupon the defendant called J. W. Shuck who, after being sworn, testified as follows:

J. W. SHUCK sworn.

Direct by Mr. Sweet:

Q. Where do you reside—where have you resided the last three or four years?

A. In Urbanna, Champaign County.

Q. What office did you hold in that county?

A. Clerk of the county court.

Q. How long have you been in the clerk's office as deputy-clerk, and so on?

A. I have been clerk myself a little over two years, and have been deputy since June, '65.

Q. Been in the office regularly all that time?

A. Yes, sir.

52 Q. I will ask you if while you were in the county clerk's office, Champaign County, any election returns referring to this subscription of stock came under your notice?

A. No, sir; none.

Q. Never been any returns?

A. No, sir.

Q. Has there been anything at all relative to holding an election on the fourth of August?

A. Nothing from the officers of the township, that I know of; the railroad company filed a certificate.

Q. Did you examine the record to see?

A. Yes, sir, I did; never been able to find anything.

Q. State, if you know, whether this township ever paid any taxes assessed against these bonds?

A. I think some parties have paid the tax.

53 Q. Some citizens?

A. Yes, sir.

Cross-examination by Mr. Edwards:

Q. The township has assessed taxes?

A. The first year the township assessed.

Q. You know the fact that some citizens paid the tax, and that the township did assess the first year?

A. Yes, sir.

Re-direct:

Q. State if there was any railroad tax—if it wasn't all town tax—assessed under that head; as a matter of fact, whether all the tax assessed wasn't assessed under the head of town tax?

A. Yes, sir; under the head of township tax.

Q. Under that head?

54 A. I was going to say there was no certificate on file in my office; had no authority to levy any railroad tax—the supervisor informed me. A. The supervisor seemed anxious to make an arrangement to pay interest on these bonds, and he ordered me to levy a tax to pay it; I levied a town tax, as I had no authority to levy a railroad tax.

Q. You don't remember that this was for any other purpose than town purposes—no record of any other?

A. No, sir.

And thereupon the defendant called JOHN L. SMITH who, after being sworn, testified as follows:

By Mr. Sweet:

Q. Where do you reside?

A. St. Jo. Township.

Q. How long there?

55 A. Ten years last March.

Q. Where did you reside in 1866?

A. Right west of the township.

Q. How far west?

A. Two miles.

Q. What office do you hold?

A. Supervisor.

Q. How long have you been holding it?

A. This is the third year.

Q. Successor to whom?

A. George Doyle was Drullinger's successor.

Q. Were you at an election at St. Jo. on the fourth of August for the purpose of subscribing railroad stock to this railroad company in 1866?

A. I was'nt.

56 Q. State if you ever saw any notice calling an election.

A. I did'nt.

Q. Did you ever hear of any notice?

A. I did'nt.
Q. Did you ever see any petitions?
A. I did'nt.
Q. Did you ever sign any from the citizens of that township?
A. Never.
Q. Have you ever seen any notice of pititions since that time?
A. I haven't.
Q. About how frequently were you in St. Jo. prior to the time of holding that election?
A. Once or twice a week.
57 Q. How large a place is St. Jo.—how many houses or stores?
A. I believe twelve or thirteen families; could tell by counting up. Should say a dozen.
Q. How many stores?
A. There was only one at that time; 'Squire Tibbets had tobacco and medicine, and one thing or other.
Q. Did you ever see any notice calling this election?
A. Never saw it.
Q. At about August fourth, '66, how many legal voters were there in that township?
A. There were something over two hundred.

Cross-examination by Mr. Edwards:

Q. Where was this election held?
58 A. Well, I couldn't tell you; said to be set at Schreeve's Hall.
Q. Not at the election?
A. No, sir.
Q. Didn't vote?
A. No, sir.

And thereupon the defendant called David Swearinger, who testified as follows, after being first duly sworn:

DAVID SWEARINGER sworn.

Direct by Mr. Sweet:

Q. Where did you reside in 1866?
A. In St. Jo. Township, Champaign Co.
Q. How long had you been residing there?
A. Forty one or two years.
Q. How far from St. Jo.?
A. Two miles.
59 Q. How frequently were you about St. Jo. prior to this supposed election held there in '66, on the fourth of August?
A. I was off and on there almost every day.
Q. I will ask you if there was any notice calling for an election for the purpose of voting the township bonds in aid of this Urbanna, Bloomington & Pekin Railroad Company?
A. Never saw any.
Q. Had there been any notices posted in public places, would you have been likely to see them?
A. I should think likely; but I never saw any.
Q. Did you ever see any pitition for this election?
A. No, sir.
Q. Were you at the election?
A. I was.
60 Q. Did you see any tickets?

A. Don't recollect that I did.
Q. Do you know how many persons voted at that election?
A. I do not; I wasn't there all day.

Cross-examination by Mr. Edwards:

Q. The election you spoke of was an election by the town of St. Jo- for subscription to the stock of the Urbanna, Bloomington & Pekin Railroad Company?
A. That is what it was said.
Q. Did you vote?
A. I did.
Q. Were there others that voted?
A. I suppose there were.
Q. Don't you know there were others?
A. Of course there were some.

61 And whereupon the defendant called WILLIAM H. RHODES' who, after being duly sworn, testified as follows:

By Mr. Sweet:

Q. Where do you reside?
A. St. Jo Township, Champaign Co.
Q. What office do you hold?
A. Town clerk.
Q. How long have you held it?
A. Since April last.
Q. Are you keeper of the records of the township?
A. Yes, sir.
Q. State if there is on file in your office any record of any kind relating to this election which was held at St. Jo. Township on the fourth of August, 1866, having for its purpose the issuing of bonds to the Urbanna, Bloomington & Pekin Railroad?
A. There is no such record.
62 Q. Have you searched your office to find out?
A. Yes, sir; I examined every paper and record in my office expressly to find out whether there was any record relating to that particular special election.
Q. Any reference in the record-book; is this the record-book? (Illustrating.)
A. This is the record-book.
Q. Is there anything there?
A. There is nothing in the book—no account of the election. I have examined it page by page.
Q. Is there any petition or notice on file in your office as to the time of this election?
A. None whatever.
No cross-examination.

And thereupon the defendant called BENJAMIN TIBBETTS, who, after being duly sworn, testified as follows:

63 Q. Where did you reside in 1866?
A. St. Jo. Township.
Q. Where now?
A. Same place.
Q. How long there?
A. Since '57.

Q. The town clerk, Mr. John Laird had his office with you in 1866?
A. Yes, sir.
Q. Do you know whether any petition by any citizens of St. Jo. Township was ever presented to John Laird asking for the calling of an election to vote the bonds of that township to the Danville, Urbanna, Bloomington & Pekin Railroad Company?
A. Not to my recollection.
Q. I will ask you if there was any notice or if you know of any having been issued by John Laird, the town clerk, for that election?
64 A. No, sir; we talked about it just a little before the election.
Q. Don't know of any notice—did you live in that town at that time, and did you see any notice before or after election?
A. Never saw any notice to my recollection; the store is such a common place for notices. I never had my attention called to that.
Q. I will ask if you assisted Mr. La'rd in the discharge of his duties as township clerk in the drawing of papers, &c.?
A. He almost always called my attention to his business.
Q. Your attention was never called to this?
A. No, sir.

Cross-examination by Mr. Edwards:

Q. Did you vote at that election?
A. Yes, sir.
Q. As a citizen of St. Jo.?
65 A. Yes, sir.
Q. What office did you hold?
A. Justice of the peace.
Q. That makes you ex-officio town auditor?
A. Yes, sir.
Q. Did you ever audit the account of Mr. Drullinger to go to Bloomington and deliver the bonds of this company there?
A. It seems to me I did. I can't recollect different accounts so long ago.
Q. About the notices, you don't recollect seeing any; there were so many posted of various kinds you don't recollect any of this kind?
A. Never saw any.

Re-direct by Mr. Sweet:

Q. At the time of auditing this account, did you have any conversation with him?
66 A. I can't recollect the fact; if the record shows, all right.

And thereupon the defendant called Thomas Swearinger, who, after being duly sworn, testified as follows:

THOMAS SWEARINGER sworn.

Direct by Mr. Sweet:

Q. Where do you reside?
A. St. Jo., Champaign County.
Q. How long there?
A. Thirty-five years.
Q. Were you at an election in St. Jo., in August, 1866?
A. I think not, sir.
Q. Did you ever see any petitions or notices of any such election?
A. Never saw any petition or notice.
Q. How far away did you live?

67 A. Two miles away from where they had the election.

Q. Were you down town frequently?

A. Two or three times a week; sometimes more; sometimes not so often.

Q. You have been the township collector of St. Jo. Township?

A. Yes, sir.

Q. How long?

A. Two years.

Q. '69 and '70?

A. Yes, sir.

Q. At that time were you township collector?

A. No, sir; 'Squire Tibbetts.

Q. State whether or no you were enjoined by the officers of St. Jo. Township, for either or both of those years, to collect the tax?

68 A. I was, sir.

Q. The tax that was first paid by some of the citizens—I will ask you if that was put on the books as township or railroad tax?

A. I think it was put on as town tax.

Q. Not specified as railroad tax?

A. I don't think it is. 'Squire Tibbets was collector at that time.

Q. State if for both '69 & '70 you were enjoined.

A. Yes, sir; there was an injunction on me.

Q. Do you know at whose instance that injunction was sued out; what number of people of St. Jo. Township were parties to the bill?

A. I think Mr. Smith here has got it down.

Cross-examination by Mr. Edwards:

Wasn't this put down for township and other purposes?

69 A. I think it was for township purposes; don't think it said anything about other purposes.

Q. You were enjoined from collecting for railroad purposes?

A. I was enjoined not to collect.

Q. I will ask if your books, as collector, don't show that this tax was levied for railroad purposes?

A. I think for township purposes. The books will show the first year as town tax, the second year as railroad, and the third year as railroad again.

And thereupon the defendant rested its case.

And thereupon the plaintiff, in rebuttal, to further maintain the issue on his part, called Harrison W. Drullinger, who, after being sworn, testified as follows:

Plaintiff's side: witnesses all sworn together.

HARRISON W. DRULLINGER sworn.

Direct by Mr. Edwards:

Q. Where do you reside?

A. St. Jo. Township, Champaign Co.

70 Q. How long have you resided there?

A. I came there in the year '40.

Q. What is your occupation?

A. Farmer.

Q. Did you hold any office in the town of St. Jo., in the year 1867, and if so, what?

A. Supervisor, at that time.

Q. Are you the same Drullinger who signed the coupons and bonds? (Illustrating.)

A. That is my handwriting.

Q. You are the same that signed then?

A. Yes, sir.

Q. I will get you to state whether there was an election held in St. Jo. Township to determine whether the township would subscribe to the stock of this Danville, Urbanna, Bloomington & Pekin Railroad, and if so, when that election was held, and for what amount of stock?

71 A. Well, I was at an election there some time in the fore-part of August, in the year '66, for the purpose of taking stock.

Q. How much stock?

A. Twenty-five thousand dollars.

Q. You may go back and state what steps were taken in order to have that election held by the people?

A. I will have to do it in my own way. Some time in July, I think, Mr. Griggs the president of the road sent a notice down to St. Jo. Township that he would be down at a certain time to take the matter up before the people, whether or not they would subscribe. The time arrived, and we met; he talked the thing up, and others talked the thing up, and finally there was a resolution offered, I think by Mr. Kelly, that the township should take forty or fifty thousand dollars worth of stock; it was voted down, and I think a resolution was offered then to take fifteen thousand; that was voted down, and some other parties came over to where we were, and it was finally concluded to divide the thing

72 and call it twenty-five thousand dollars; that motion was put and carried, to the best of my recollection, almost unanimously. After that was carried, a motion was adopted calling an election to vote upon the question; and that is the best of my recollection as to how the notice got started.

Q. By whom signed? State whether there were any opposed to it or not?

A. I saw a notice stuck upon a tree op'osite my house, and there was one at the store of Mr. Shreeve, and, if I don't disremember, there was one at Mr. La'rd's or Mr. Tibbets' office.

Q. Notice for what?

A. To call the electors together to vote upon this question of subscription.

Q. Did you state the time when they were to come together?

A. I can't state the time.

Q. Did the notice purport to state the time? State what was in the notice?

73 A. Didn't see anything strange or singular about it; it fixed the time.

Q. To the best of your recollection, was the election held at the time?

A. It was—yes, sir.

The COURT. Whom was the notice signed by?

A. Can't say, I supposed at the time by the proper officer.

Q. Who voted at that election—they were citizens of the township?

A. Yes, sir.

Q. You may state, if you choose, the result of that election.

By counsel for defence:

Q. Who was the judge of that election?

A. To the best of my recollection, Rufus Dodge; Joseph Wil-

74 son, township clerk.

Q. Where is Rufus Dodge?

A. Dead.
Q. Where is the person who acted as clerk?
A. I don't know; he has left the country.
Q. Go on and state how many voted at the election?
A. Can't state the exact number, but to the best of my recollection, there were between sixty-five and seventy-five votes.
Q. How did the vote stand?
A. I think, two or three to one.
The COURT. The vote was by ballot?
A. Yes, sir.
Q. How were the ballots fixed?
A. For subscription, and against subscription.
Q. Was the vote announced by the moderator?
75 A. I didn't hear it announced; I understood it was.
Q. You know the majority was in favor of subscription?
A. I so always understood.
Q. (To the court.) Here is the subscription by him as supervisor of the town.
Q. (To the witness.) I will ask you if that is your signature?
A. That is my handwriting; yes, sir.
The COURT. Q. I want to ask you to whom that book belonged? (Illustrating.)
A. To this railroad company.
Q. Did you make that subscription as supervisor?
A. I did.
76 Q. How did you get it?
A. From Mr. Griggs, the railroad company, with the understanding I should return it that spring.
Q. To whom were these bonds delivered by you?
A. I delivered them to the president of the railroad company, Mr. Armintrott.
Q. Were you allowed expenses by the auditing board for going to Bloomington?
A. I was, sir; when I came back I presented my bill and they paid it.
Q. Do you know anything about the tax being levied for the payment of the bonds?
A. I don't know anything but what I heard.
Q. Do you know Mr. John L. Smith?
A. Yes, sir.
Q. Was he present at that election?
A. I think he was.
77 Q. Did he vote at that election?
A. I didn't see him, but I think he did; I didn't see him give his vote.
Q. He was present?
A. I think he was.

Cross-examination by Mr. Sweet:

Q. When was this election called; did you sign any papers calling an election?
A. I don't think I did; don't recollect of any.
Q. You saw some notice?
A. Yes, sir.
Q. Where?
A. Stuck on a tree right in front of my house.
Q. How far from the village?

A. A mile—over.

Q. Did you read the notice?

78 A. I did.

Q. By whom signed?

A. To the best of my opinion signed by Mr. La'rd; don't recollect it.

Q. Where did you see another?

A. At Mr. Shreeve's store.

Q. What place?

A. The usual place; the election was held in the hall above.

Q. Where was the notice posted?

A. I think on a post near the door; they have a post they post notices on sometimes, right in the house.

Q. Did you read that notice?

A. I think I did.

Q. What did it say?

79 A. I can't word it; it was for the purpose of taking stock in this railroad company.

Q. Who was it signed by; anybody?

A. Can't say.

Q. Were either of those notices signed by the town clerk?

A. I don't know about that; I always thought so; I saw nothing strange about the notice; there were several township notices at that time, all put up in the same way.

Q. The subject didn't surprise you?

A. No, sir.

Q. Nothing very peculiar about the notice?

A. No, sir; didn't see anything peculiar; it specified for an election for subscription.

Q. You say you was allowed some expenses; when was that?

A. At the organization of the railroad company.

Q. Who allowed those expenses?

80 A. The board of auditors, 'Squire Tibbets and 'Squire Wright were part of the board at that time.

Q. Didn't you have several accounts before the board at that time?

A. Perhaps I had other accounts; they allowed all I presented.

Q. Didn't they talk about this question at all?

A. I told them what I went for, and what I did, and presented my bill of charges; I didn't charge anything for my time; I told them "Pay my expenses, I will be satisfied."

Q. Did you talk of any other bill?

A. Perhaps I did.

Q. Who was present at that time?

A. 'Squire Tibbets and 'Squire Wright.

Q. Wasn't the town clerk there?

A. Perhaps he was; he almost always was by at the time of auditing accounts; very likely several gentleman there who had bills to present.

81 Q. State whether your being allowed expenses for going to some place and acting as representative of stock was discussed there at all?

A. I don't think it was. I presented my bill; they allowed it; don't recollect any discussion at the time.

Q. About this notice; do you know when they were first put up: when did you first see them?

A. Prior to the election; can't say the day they were put up.

Q. Before the election day, however?

A. Yes, sir.
Q. How long?
A. Can't tell exactly.
Q. As near as you can recollect?
A. I will say from four to six days before the election.
Q. One on a tree before your house?
82 A. Yes, sir.
Q. How far was that tree from your house?
A. I think along the roadside.
Q. The other at Mr. Shreeve's store;
A. Yes, sir.
Q. You do not know by whom these notices were signed?
A. I don't know that; I don't recollect, several special elections were held that summer; the notices all specifying the object of the elections, so far as I know.
Q. There were frequently notices posted in that vicinity?
A. Yes, sir.
Q. Did you read any of these notices over?
A. I did, sir.
Q. State the contents, sir?
83 A. To take railroad stock.
Q. Time named?
A. On such a day.
Q. What day?
A. On such a day a railroad election will be held.
Q. What day?
A. I can't say what day?
Q. I want you to state as near as you can the substance of those notices, not the words?
A. It was for the purpose of taking stock in a railroad company.
Q. Can't you tell me anything more?
A. It was about this way; whether they should take so much stock in the Danville, Urbanna, Bloomington & Pekin Railroad Company; to vote upon the question.

Redirect by Mr. Edwards:

84 Q. Did you vote at the election for directors, and if so, in what capacity; representing whom?
A. I voted, as supervisor, for directors of the railroad; that was my understanding.
Q. The stock subscribed by the township you represented.
A. Yes, sir; and I took a certificate for the amount.
Q. From whom?
A. From the railroad company.

Recross, by Mr. Sweet:

Q. What member of the railroad company?
A. Got it from the—don't recollect; Mr. Smith has the certificate.
Q. I want you to answer the question, from whom?
A. From the railroad company; Mr. Griggs, I suppose, was president.
85 Q. Don't you recollect what individual you got the certificate from?
A. I don't recollect individually because the board of directors was all around the table; it was presented to me; I don't know by whom—whether by Mr. Greggs or Mr. Smith; by some of them.

The plaintiff then introduced the following subscription:

Subscription.

We, the undersigned persons, whether in private capacity or as representatives of corporations, under whose authority we act, do hereby subscribe the number of shares of the capital stock of the Danville, Urbanna, Bloomington & Pekin Railroad Company, set opposite our respective names, and do severally agree to pay to said railroad company the amount of capital stock so subscribed, upon the terms fixed by the board of directors of said company, made under such regulations as the charter provides.

Harrison W. Drullinger, supervisor of the township of St. Joseph, Champaign County, Illinois, for and in behalf of said town, 250 shares..... $25,000 00

I, A. P. Lewis, secretary of the Indianapolis, Bloomington &
86 Western Railway Company, do certify the above to be a true copy of the original subscription on file at this office.

[SEAL.] A. P. LEWIS,
Secretary.

And thereupon the plaintiff called David Staten, who, after being duly sworn, deposed and testified as follows:

Mr. STATEN sworn.

Direct by Mr. Edwards:

Q. Where do you reside?
A. St. Jo., Champaign County.
Q. How far from the village?
A. One or two miles.
Q. How long there.
A. Thirty-six years.
Q. Been constantly dwelling there?
A. No, sir; seven or eight or ten years after that I came there; been there ever since.

Q. Do you recollect of an election having been held in August,
87 1866, in the township of St. Jo. in Champaign County, for the purpose of determining whether the township would or would not subscribe to the capital stock of this railroad company; if so, what time in August that election was, and for what amount of stock subscription was to be made?

A. I saw an advertisement stuck up, stating the time. I think it was some time in August; along about the thirteenth, we should meet and vote to see whether the citizens of St. Jo. Township should take twenty-five thousand dollars stock or not. They met on that day and voted, and, to the best of my recollection, there were about sixty-nine or seventy votes, or I should think about seventy-two votes cast at the election.

Q. What was the result of it?

A. There were seventeen against the railroad tax, and the balance for it—for taking stock.

Q. Did you see any notices?

A. I saw one—did'nt see but one—on a tree; the wind blew it down.

Q. That was prior to the election?

88 A. Yes, sir.

Q. Was there any more than one election?
A. No, sir.
Q. But one election?
A. No, sir.
Q. Who was the moderator?
A. A man by the name of Rufus Dodge.
Q. Who was clerk?
A. Joseph Wilson.
Q. Did you vote?
A. Yes, sir?
Q. Do you know Mr. Smith? (Pointing.)
A. Yes, sir.
Q. Did you see him that day; do you know whether he voted or not?
89 A. I don't know.
Q. Did you notice by whom this notice was signed?
A. It had John La'rd's name upon it.
Q. Do you know John La'rd's handwriting?
A. Yes, sir.
Q. Did you notice whether that signature was in his handwriting?
A. I think it was not.
Q. You think it was some other?
A. Yes, sir.
Q. The notice was given in the name of John Lard?
A. I allowed it was this Wilson who done it; I did'nt know.
Q. You suppose Wilson did it?
A. He acted as clerk, made me suppose so.
90 Q. This place where you saw the notice, was it a public place in the township?
A. Yes, sir.
Q. Whereabouts was it?
A. Right at the cross-roads, one going to Urbanna and the other to Sidney, nearly east of Harrison Drullinger's house and north of his barn.
Q. Do you know Mr. G. W. Doyle?
A. Yes, sir.
Q. Was there such a man supervisor?
A Yes, sir.
Q. I wish you would look at that (illustrating,) and see whether it is his handwriting; whether you know his handwriting; and if so, whether it is his?
A. I would swear that is his handwriting.
Q. With regard to this tax that was levied, state whether it was for the purpose of paying the interest on these bonds; tell
91 what you know in relation to the levying of taxes for the payment of these bonds?
A. It might be out of order to state it the way it was: I was up to Urbanna with George Doyle and the county clerk told me he would—
The COUNSEL FOR DEFENCE. This is objected to.
A. Mr. Doyle said his folks didn't want him to levy it and he wouldn't levy it as railroad tax but would levy it as town tax and other purposes, and this they did.

Cross-examination by Mr. Sweet:

Q. How many notices did you see?
A. But one.
Q. Where was that?

A. On a hawbush on the north of Harrison Drullinger's barn.

Q. Did you hear him testify; was it the same notice?

92 A. The same notice, I guess.

Q. You think not La'rd's handwriting?

A. Think not.

Re-direct by Mr. Edwards:

Q. Mr. La'rd stated he had Wilson to do his business; do you know Wilson?

A. I do not; not enough to swear to him.

Recross by Mr. Sweet:

Q. Wilson acted as clerk of the election?

A. Yes, sir.

Q. How long had this man Wilson been doing business there?

A. Didn't know he did business there at all.

And thereupon the plaintiff called J. A. Lucas, who testified as follows:

Mr. J. A. LUCAS sworn.

Direct by Mr. Edwards:

93 Q. Where do you reside?

A. In Homer Township, at this time.

Q. In 1866, where?

A. St. Jo.

Q. In August and July?

A. Yes, sir; and seven years previous to that.

Q. Now state whether an election was held in the township of St. Jo. to determine whether the township should subscribe to the capital stock of this company; if so, when and where the election was held, how many voted, and what was the result?

A. It was held in August, I think. The number of votes cast, as near as I can recollect, was between seventy and eighty—perhaps seventy-two or three; the result I don't remember, perhaps eight, ten, or a dozen votes against subscription, and there may have been over that number; I don't know exactly; I know there was a large majority in favor of subscription.

Q. How much stock?

94 A. Twenty-five thousand dollars.

Q. I will get you to state if you saw any notice of this election; and if so, where?

A. I saw one at St. Jo.

Q. Whereabouts?

A. On a store door or about the door.

Q. What was the notice and by whom did it purport to be signed?

A. Can't say whose signature.

Q. What was the substance of the notice?

A. Notifying the people there was an election to be held on a certain day to determine whether or not this subscription should be made.

Q. How long before the election did you see the notice?

A. Couldn't tell exactly, perhaps eight or ten days.

Q. Do you know Mr. Smith?

A. Yes, sir; somewhat acquainted with him.

95 Q. Did you see him there at the election?

A. Can't say that I did; don't remember.

And thereupon the plaintiff called G. JENNINGS who, after being sworn, testified as follows:

Direct by Mr. Edwards:

Q. Dr., where do you reside?
A. St. Jo., Champaign County.
Q. In the village?
A. Yes, sir.
Q. Where did you reside in July and August, '66?
A. In the village of Old St. Jo.
Q. Do you know of an election being held in the township of St. Jo., in 1866, to determine whether the township should vote a subscription to a railroad? First answer whether there was such an election.
A. There was such an election.

96 Q. Please state when that election was held, where it was held, and you may go back and give an account, so far as you know, how that election came to be held.

A. The preliminary meeting was on the 7th day of July, '66, and this election followed that some four or five weeks. The exact time I can't tell; some time in August. The seventh day of July that meeting was held. There were some minutes of that meeting. I was appointed secretary. I was called away professionally during the meeting, and didn't get back again, and some minutes were handed to me next morning. In these minutes was a resolution:

COUNSEL FOR DEFENCE. I object to the resolution.

The COURT. Have you the original? All you want to state is that the meeting voted in favor of calling an election.

Q. State the result.
A. I have no means of knowing.

97 Q. Did you see any notice of this meeting prior to the time in which the election was held?

A. I don't recollect.
Q. Were you at the election?
A. I was. I voted.
Q. There were other persons, other citizens of the town, there?
A. I think there were.
Q. Do you know Mr. Smith?
A. Yes, sir.
Q. Did you see him?
A. Couldn't say.
Q. What was the result?
Q. What was the result as announced?
A. Couldn't say positively, exactly; the majority was for subscription.

98 Q. Do you know, of your own knowledge, that the majority was for subscription?

A. Nothing more than I have stated.

Cross-examination by Mr. Sweet:

Q. Where do you reside?
A. In St. Jo.
Q. Did you see any notice of the election?
A. Not to my recollection.
Q. Then this meeting didn't purport to be held by any authority?
A. Not that I know of—any special authority. I don't know who it was called by.

Q. That meeting at which they determined to call an election?
A. According to the minutes, don't know.

And thereupon plaintiff called JOSEPH KELLY, who testified as follows:

Direct by Mr. Edwards:

99 Q. Where do you reside?
A. Champaign County.
Q. Where did you reside July and August, 1866?
A. In St. Jo.
Q. How far from the village?
A. In the edge of it.
Q. Do you know of an election having been held in the township of St. Jo., by the citizens of that township, to determine whether the township should subscribe to a railroad?
A. There was such an election.
Q. What time was the election held?
A. It was held as other elections are held on that day.
Q. What month was it in?
A. It was in August.
Q. Can you state the time?
100 A. I don't think I can.
Q. Who was the moderator of the meeting?
A. Drullinger was there. Don't recollect whether he was the moderator or Dodge.
Q. State the result.
A. I don't know just what number they got in favor of the bonds.
The COURT. Did they get a majority?
A. Yes, sir.
Q. Do you recollect how much the subscription was to be?
A. Twenty-five thousand.
Q. Did you see a notice prior to this time.
A. Yes, sir; I did. One at the forks of the road, and the other at the blacksmith's shop. There are two blacksmith's shops there.
101 Q. What was the substance?
A. Notice of an election at a given time.
Q. How long before this time did you see it?
A. Can't tell; eight or ten days, perhaps two weeks.
Q. By whom did those notices purport to be signed?
A. The supervisor.
Q. Do you know who signed the notice?
A. I think Drullinger; can't be certain; I saw the notice. Who signed it can't say.
Q. Was it that notice that directed you to the meeting?
A. Yes, sir.
Q. Were you at the election, and did you vote?
A. Yes, sir.
102 Q. Did you see Mr. Smith there?
A. Think I did. He was generally out on such occasions.
Q. Don't you know whether he voted or not?
A. I don't know.

Cross-examination by Mr. Sweet:

Q. Have you any special recollection of seeing Mr. Smith there, only your reason that he was generally at elections?
A. Don't recollect possitively; think he was.

And thereupon the plaintiff called J. H. STRONG, who testified as follows:

Direct by Mr. Edwards:

Q. Where do you live?
A. St. Jo. Township, Champaign County.
Q. How long there?
A. Thirty-five years.

103 Q. Do you recollect an election held in August, 1866, by the citizens of St. Jo., to determine whether they would or would not subscribe to the capital stock of this railroad company?

A. Yes, sir; I recollect.
Q. Can you state when and where that election was held?
A. At St. Jo.
Q. You mean the village?
A. Yes, sir.
Q. When, as near as you recollect?
A. In the month of August, 1866.
Q. What was the result of that election; was the majority for or against?
A. Best of my recollection, majority was for subscription.
Q. Did you vote at that time?

104 A. I did.

Q. You recollect of seeing Mr. Smith there?
A. Don't know; don't recollect.
Q. Did you see any notice?
A. Seems to me I did; can't say positively.
Q. Do you recollect what called you to the election?
A. I was right there close by.
Q. Was it the general talk?
A. I was absent a good deal from home at that time; I know I went to the election, but I don't recollect what called me.
Q. Did you have any conversation with Mr. La'rd?

Cross-examination of Mr. Sweet:

Q. You say a majority for this subscription; what personal information have you, or was this from the statement of somebody else?

105 A. From the statement of others. Didn't see the result of the election.

Re-direct by Mr. Edwards:

Q. Was it declared at the time?
A. To my recollection, it was.
Q. That is what you meant?
A. Yes, sir.

And thereupon the plaintiff called V. B. Swearinger, who testified as follows, after being duly sworn:

V. B. SWEARINGER sworn.

Direct by Mr. Edwards:

Q. Where do you reside?
A. St. Jo. Township.
Q. How long?
A. Since the organization, I guess.

106 Q. Do you know of an election being held in the month o[illegible]

August, '66, by the citizens of St. Jo. Township, to determine whether the township should subscribe to the stock of this railroad company or not?

A. Don't know that I attended the election.

Q. Did you see any notices of the election?

A. Yes, sir; I saw a couple.

Q. Whereabouts did you see them posted?

A. Well, one was about a quarter of a mile west of the burgh, and the other was right in the burgh.

Q. State the substance of those notices; what was in them?

A. The subject was to vote upon the question of taking stock in a railroad.

Q. What else?

A. It specified the time of the election.

Q. How long before that time—before the election—did you see these notices up?

107 A. Don't know that I could say, probably eight or ten days.

Q. By whom signed?

A. Mr. Lard's name was upon the notices?

Q. Know whether in his signature or not?

A. Couldn't say.

Q. It was over the signature of the town clerk?

A. Yes, sir.

Q. Were you at the election?

A. No, sir.

Q. Do you know what has become of the papers of the election?

A. No, sir.

Cross-examination by Mr. Sweet:

Q. Is it not true that you directed Mr. Drullinger not to issue

108 these bonds; that this whole proceeding was illegal?

A. Not just in that way. Mr. Armingtrout, at the time they wanted these bonds, sent word, on Saturday evening, to tell Mr. Lard and Mr. Drullinger to come up on Monday morning; they wanted to fix the matter with reference to these bonds; and then Mr. Drullinger and Mr. Lard and all spoke to them not to be in too big a hurry to get at those bonds, as there might be such a thing as their not coming out; be better to hold on to the bonds until we could get some assurance of the road's being built.

Redirect by Mr. Edwards:

Q. There is no dispute that this railroad runs through your township?

A. No, sir.

Re-cross:

Q. Didn't Mr. Drullinger tell you this election was an illegal thing?

109 Mr. EDWARDS. No matter what we told you.

A. No, he didn't.

And thereupon plaintiff called JOHN KIRKPATRIC, who, being first sworn, testified as follows:

Q. Where do you reside?

A. Champaign County, now.

Q. Where did you reside in the summer of '66?

A. St. Jo. Township, Champaign County.

Q. Do you know of an election being held, in the month of August, in the township of St. Jo., in 1866, to determine whether the township should subscribe to the capital stock of a railroad?

A. I don't know whether it was in August or not, or in the fall; I know there was an election held there.

Q. Were you at the election?

110 A. Yes, sir.

Q. Do you recollect the result of the election?

A. Only from hearsay.

Q. From the announcement of the officers?

COUNSEL FOR DEFENCE. I object to this on the same ground; your record ought to show that.

Q. State whether the result was announced to the officers there or by persons holding the election?

A. My recollection is that there were thirty-two votes cast at that election.

Q. Thirty-two or sever?

A. Twenty for and twelve against it.

Q. Do you recollect whether Mr. Smith was there or not?

A. Do not, sir.

111 And thereupon defendant called JOSEPH H. SHREEVE, who, after being sworn, testified as follows;

Direct by Mr. Edwards:

Q. Where do you reside?

A. St. Jo., Champaign County.

Q. In the summer of '66, where?

A. Then in what we call Old St. Jo., same township.

Q. Do you recollect of an election in the township of St. Jo., to determine whether the township should subscribe to the stock of a railroad company?

A. I do.

Q. State when that election was held?

A. On the fourth day of August.

Q. Where?

A. In my hall, at St. Jo.

112 Q. Who presided?

A. R. R. Dodge, moderator; Joseph Wilson, clerk.

Q. How many voted at that election?

A. My recollection of the vote at that election, 62 for it and 17 against it.

Q. Was that result declared by the officers holding the election?

COUNSEL FOR DEFENSE. We object to that.

Q. By whom was it declared?

A. By the clerk of the election. I was up in the hall at the time the result was announced, when they were making up the lists.

COUNSEL FOR DEFENSE. That's objected to.

Q. Do you know that the vote was declared?

A. Yes, sir; I know that.

COUNSEL FOR DEFENSE. I object to that.

113 Q. Prior to that election, did you see any notices; if so, where, and by whom signed?

A. I saw one notice.

Q. Where?

A. In my store; that notice was put up there ten or twelve days before the election.

Q. By whom?

A. By John Lard, town clerk.

Q. The purport?

A. That was the purport; the notice was stuck up there by some men on a square post I had in the centre of the building, and I found it lying on the floor and picked it up and stuck it up somewhere, and it staid there till after election.

Q. State what the purport was?

A. The purport was to notify the citizens to come out and vote upon the question of taking stock in the D., U., B. & P. Railroad.

114 Q. It fixed a day?

A. Yes, sir; and I think the election was held on the day named.

Q. Is your store a public place?

A. I suppose so; it was the post office at that time, and I guess then I had the only store in the place; I took a great part in the election.

Q. Was that the usual place of holding the town meetings?

A. Yes, sir; it had been.

Q. Did you see Mr. Smith that day?

A. I think Mr. Smith was there that day.

Q. Did he vote?

A. Couldn't say; my impression is he was there; it might have been some other election, but my impression is he worked with the railroad that day.

Q. Where does Mr. Lard live; in the village?

115 A. You might call it so; just at the edge.

Q. What is his occupation?

A. Blacksmith; farms some. St. Jo. is pretty well scattered, not much of it there as the old town was.

Q. State how long this railroad running through the township has been established?

A. This railroad was finished down through St. Jo. to Danville some time last December. I have been agent there since last December a year ago.

Q. Agent of the road?

A. Yes, sir; they put down a switch half a mile long.

Q. Do you know when the road was located through the township?

A. I do not; it seems to me in the summer or spring of '67.

Q. Do you know anything further in relation to this case?

116 A. Not that I remember of.

Cross-examination by Mr. Sweet:

Q. This notice you speak of, do you know who it was signed by?

A. Didn't see Mr. Lard sign it.

Q. Do you know whether it was his handwriting or not?

A. Do not; didn't pay enough notice to know whether it was his handwriting or not; saw a notice there; supposed it was like all other notices.

Q. Ten or twelve days before election?

A. Yes, sir.

Q. Not there before that?

A. Don't think it was over ten or twelve days before election.

And thereupon the counsel for the plaintiff closed by submitting
117 the following letter to James Rogers with reference to the levying of a tax:

(Copy.)

ST. JO., ILL., *Oct.* 25, '67.

Mr. JAMES ROGERS.

DEAR SIR: Yours of the 11th inst. is at hand; in answer I will say we haven't the interest to meet our bonds, but I have levied a tax for that purpose, which will be collected next spring.

Yours truly,

G. W. DOYLE.

And thereupon plaintiff rested his cause. And the defendant recalled John L. Smith, who testified as follows:

Defendant's side again. Rebuttal.

JOHN L. SMITH recalled.

Direct by Mr. Sweet:

Q. How many citizens joined in the bill to enjoin the collection of this tax?

A. I think one hundred and ten the first bill.

Q. How many citizens of St. Jo. joined in the bill as complain-
118 ants to enjoin the tax in 1870?

A. Two hundred and ten, I think.

Q. State if the county treasurer and township treasurer were both enjoined upon the collection of this tax?

A. Yes, sir.

The COURT. Against all who had any right?

COUNSEL FOR PLAINTIFF. Of course I object to anything of this kind.

Q. I will ask whether this tax was assessed as a railroad tax?

A. Township tax the first year, and in '68, 69, and '70 railroad tax.

And thereupon both parties rested, and the foregoing is all the evidence heard and all the evidence offered by either of the parties.

And thereupon it was argued by the parties at the time that all evi-
dence offered by either side should be received under objections
119 of the opposite party, and should be considered as admitted under exceptions from the opposite party.

And thereupon the court charged the jury as follows, to wit:

The election held in August, 1866, as detailed in the evidence, was validated by the act of Feb. 28th, 1867, so as to authorize the def't to subscribe for stock in the Danville, Urbanna, Bloomington & Pekin Railroad, and to issue the bonds in question, and when the stock was subscribed and the bonds issued, the bonds are binding on the defendant in the hand of a bona-fide holder.

To which charge the def't then & there excepted.

The court further charged the jury as follows:

The recitals in the bonds estop the defendant from denying the fact

of a valid election as against a bona-fide holder of the bonds or coupons attached thereto.

To which charge the def't then & there excepted.

And thereupon the jury gave their verdict against the defendant.

And thereupon the defendant, by its counsel, at the time entered its motion for a new trial is said cause, and assigned for cause of such new trial the following, to wit:

120 1. Because the verdict was contrary to the evidence.

2. Because the verdict was contrary to the law.

3. Because the court admitted improper evidence for the plaintiff, and refused proper evidence for the defendant.

4. Because the instructions of the court to the jury were contrary to the law.

But the court overruled the said motion for a new trial; to which the defendant at the *the* time then & there excepted.

And gave judgement, upon the said verdict of the said jury, against the defendant; to which the defendant then and there at the time excepted.

And defendant then and there at the time prayed an*d* appeal to the Supreme Court, and which the court at the time then and there allowed.

And inasmuch as the matters aforesaid do not appear of record, the counsel for the defendant presents thi bill of exceptions at the time of said trial, and prays that the same may be signed and sealed by the court and made a part of the record in said cause; and it is done accordingly.

S. H. TREAT. [SEAL.]

(Indorsed:) Filed June 14th, 1871. J. A. Jones, cl'k.

121 And afterwards, to wit, on the twenty-first day of said June of the year aforesaid, came said defendant, by its attorneys, and filed in said clerk's office its bond herein, which said bond is in the words and figures following, to wit:

Bond.

Supreme Court of the United States.

JAMES ROGERS
v.
SAINT JOSEPH TOWNSHIP, CHAMPAIGN COUNTY.

Know all men by these presents that I, Saint Joseph Township, Champaign County, as principal, and we, Thomas Swearinger, David Swearinger, Robert Peters, and John L. Smith, as securities, are held and firmly bound unto James Rogers in the sum of eight thousand and six hundred dollars, to be paid unto the said James Rogers, his heirs, executors, or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, *executors*, and administrators, firmly by these presents, sealed with our seals, and dated this 16th day of June, A. D. 1871.

122 Whereas the above-named Saint Joseph Township, Champaign County, has prosecuted a writ of error to the Supreme Court of

the United States to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the southern district of Illinois:

Now, therefore, the condition of this obligation is such, that if the above-named Saint Joseph Township, Champaign County, shall prosecute its said writ of error to effect, and answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

SAINT JOSEPH TOWNSHIP, [SEAL.]
By JOHN L. SMITH, *Supervisor.* [SEAL.]
THOMAS SWEARINGER. [SEAL.]
JOHN L. SMITH. [SEAL.]
DAVID SWEARINGER. [SEAL.]
ROBERT PETERS. [SEAL.]

Approved.

S. H. TREAT,
Dist. Judge.

(Indorsed:) Filed June 21st, A. D. 1871. J. A. Jones, cl'k.

123 Circuit court of the United States for the southern district of Illinois, ss:

I, J. A. Jones, clerk of the circuit court of the United States in and for the southern district of Illinois, do hereby certify that the foregoing is a true and complete copy of the papers filed and proceedings thereon had in a certain cause wherein James Rogers is plaintiff and Saint Joseph Township, Champaign County, Illinois, is defendant, as truly and completely as the same appear of file and record in my said office.

In witness whereof I have hereunto set my hand and seal of said court at Springfield, in said district, this fifth day of October, in the year of our Lord one thousand eight hundred and seventy-one, and of our independence the ninety-sixth year.

[SEAL.] J. A. JONES, *Clerk.*

[5-cent int. rev. stamp, canceled.]

124 UNITED STATES OF AMERICA, *ss:*

To James Rogers, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Illinois, wherein St. Joseph Township, Champaign County, Illinois, is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness Samuel H. Treat, district judge of the United States for the southern district of Illinois, and one of the judges of the circuit court of the United States for said district, this twenty-first day of June, in the year of our Lord one thousand eight hundred and seventy-one, and of our independence the ninety-fifth year.

S. H. TREAT,
District Judge.

125

126 I hereby return this "citation," and certify that I have duly executed the same by reading it to Messrs. Stuart, Edwards and Brown, who are the attorneys of the within-named James Rogers, this 30th day of September, 1871.

JOHN L. ROUTT,
U. S. Marshal So. Dist., Ill.
By JA'S E. HILL, *Deputy.*

Service, $6 00.

(Indorsed:) Circuit court United States, southern district of Illinois. James Rogers v. St. Joseph Township, Champaign Co., Ills. Citation.

127 UNITED STATES OF AMERICA:

Supreme Court of the United States. December term, A. D. 1871.

SAINT JOSEPH TOWNSHIP, CHAMPAIGN COUNTY, Illinois, plaintiff in error, *vs.* JAMES ROGERS, DEFENDANT IN ERROR. } Assignment of errors.

And now comes Saint Joseph Township, Champaign County, Illinois, the plaintiff in error, by William Lawrence, E. L. Sweet, and C. B. Smith, its attorneys, and says that in the record and proceedings aforesaid there is manifest error against, and to the prejudice of, the plaintiff in error in this, to wit:

First. The circuit court erred in charging and instructing the jury that "the election held in August, 1866, as detailed in the evidence, was validated by the act of February 28th, 1867, so as to authorize the defendant to subscribe for stock in the Danville, Urbana, Bloom-
128 ington & Pekin Railroad, and to issue the bonds in question; and, when the stock was subscribed and the bonds issued, the bonds are binding on the defendant in the hands of a bona-fide holder."

2. And the court erred in further instructing the jury that "the recitals in the bonds estop the defendant from *dyning* the fact of a valid election as against a bona-fide holder of the bonds or coupons attached thereto."

3. The verdict of the jury is contrary to the evidence and the law in the case.

4. The court erred in permitting improper evidence for the plaintiff below to go the jury.

5. The court erred in refusing proper evidence to go to the jury for the defendant below.

6. The court erred in overruling the motion for a new trial.

129 7. The court erred in rendering judgement against plaintiff in error.

Wherefore, and by reason of the said errors, the plaintiff prays that said judgement may be reversed, &c.

By W'M LAWRENCE,
E. L. SWEET &
C. B. SMITH,
Att'ys for Pl'ff in Error.

(Indorsement on cover:) No. 480. Saint Joseph Township, Champaign County, plaintiff in error, vs. James Rogers. S. Illinois C. C. U. S. Filed 5th December, 1871.

Circuit court of the United States for the southern district of Illinois. James Rogers v. Saint Joseph Township, Champaign County, Illinois. In assumpsit. Writ of error to Supreme Court of U. S.

United States Supreme Court.

DECEMBER TERM, 1871.

SAINT JOSEPH TOWNSHIP, Plaintiff in Error,
vs.
JAMES ROGERS, Defendant in Error.

WRIT OF ERROR TO SOUTHERN DISTRICT OF ILLINOIS.

Argument for Plaintiff in Error, by

C. B. SMITH, ESQ.

GAZETTE PRINT, CHAMPAIGN, ILL.
1872.

United States Supreme Court.

DECEMBER TERM, 1871.

SAINT JOSEPH TOWNSHIP, CHAMPAIGN COUNTY, ILLINOIS, Plaintiff in Error,

vs.

JAMES ROGGERS, Defendant in Error.

WRIT OF ERROR TO THE CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS.

ARGUMENT OF C. B. SMITH, ESQ., OF COUNSEL FOR PLAINTIFF IN ERROR.

This was an action in assumsit, brought in the court below by James Roggers, against St. Joseph township, in Champaign county, Illinois, to recover the amount alleged to be due on 38 coupons, being for interest then accrued on certain bonds held by Roggers, and which bonds purport to have been issued by St. Joseph township to aid in the construction of the Danville, Urbana, Bloomington and Pekin Railroad. The bonds from which these coupons were taken bear date Oct. 1, 1867, and are signed by Harrison W. Drellinger, the then Supervisor of the township.

On trial below, the instructions of the court to the jury necessitated

a verdict for the plaintiff for the amount claimed. A motion for new trial, by defendant, was overruled, and excepted to by defendant, and judgment rendered upon the verdict. Exceptions were taken by defendant to the instructions of the court, and to each of them as shown by the record. The evidence contained in the bill of exceptions gives a full history of the facts of the case. Some of them will be referred to in this argument, but so far only as necessary to an understanding of the controversy. But first of the legislation affecting the controversy.

1. In 1867, the Legislature of the State of Illinois passed an act entitled "An act to amend the articles of association of the Danville, Urbana, Bloomington and Pekin Railroad Company, and to extend the powers of and confer a charter upon the same." (Private Laws of Illinois, 1867, vol. 2, page 758—approved Feb. 28, 1867.) By the 12th section of that act, it is provided that, "To further aid in the construction of said road, * * townships along the route of said road may subscribe to the capital stock of said company in any sum not exceeding two hundred thousand dollars."

Sec. 13 of the act provides that "No such subscription shall be made until the question has been submitted to the legal voters of such incorporation, town or township, in which the subscription is proposed to be made, and the clerk of * * said township is required, upon the presentation of a petition, signed by at least ten citizens, who are legal voters and tax-payers of such township, in which petition the amount proposed to be subscribed shall be stated: to post up notices in at least three public places in each township * * not less than thirty days before holding such election, notifying the legal voters of such township to meet at the usual place of holding elections * * for the purpose of voting for or against such subscription. *Provided, That where elections may have already been held, and a majority of the legal voters of any township, or incorporated town,*

were in favor of a subscription to said railroad, then and in that case no other election need be had, and the amount so voted for shall be subscribed, as in this act provided; and such elections are hereby declared to be legal and valid, as though this act had been in force at the time thereof, and all the provisions hereof had been complied with."

Sec. 14 provides that, "If it shall appear that a majority of all the legal voters of such town or township, voting at such election, have voted 'for subscription,' it shall be the duty of the chief officer, etc. * * to subscribe to the capital stock of said company, in the name of such * * township, the amount so voted to be subscribed, and receive from said company proper certificates therefor. He shall execute to said company, in the name of such towns or townships, bonds, bearing interest at 10 per cent. per annum, which shall not run for more than twenty years, and which shall be signed by the * * Supervisor, and be attested by the Clerk of the town or township, * * and he shall make out a record of the issuing of such bonds."

Sec. 15 makes it the duty of the Clerk of the township, in ten days after the election, to transmit to the County Clerk of their respective counties a statement of the vote given, the amount voted to be subscribed, and the rate of interest paid. *Provided*, that where elections may have been held, *as aforesaid*, it shall be the duty of the Town Clerks to file with the County Clerks of their respective counties, within ten days after the issuing of said bonds, certificates of the votes of their towns, the amount of stock voted to be subscribed, the amount of bonds issued and the rate of interest payable thereon.

Secs. 16 and 17 relate to the extension and collection of tax for the payment of interest upon the bonds as it accrues.

The foregoing sections are the only ones that have any reference to the matter in dispute.

It appears by a subsequent statute that certain township officers, along the line of the road, had neglected to comply with some of the provisions of the act of Feb. 28, 1867; and hence, in 1869, the Legislature of Illinois passed another act, approved March 4, 1869, (see Private Laws of Illinois of 1869, vol. 3, p. 274) amendatory, as appears by its *title*, but in fact purporting to be a curative act. This last act provides that, "Whereas, certain township officers, along the line and through which the D. U. B. & P. R. R. passes, have failed to *keep a full and perfect record of elections called and held*, and Township Clerks have *failed to file with the County Clerk certificates, as required by Sec. 15 of the Amended Articles of Association of said railroad*; therefore,

SEC. 1. Be it enacted, etc., "That where *such* informalities and neglect may have occurred, and bonds have been issued, or may hereafter issue, to aid in the construction of said railroad, *that no such neglect or omission*, on the part of township officers, shall in any way invalidate or impair the collection of said bonds, both principal and interest, as they may respectively fall due. And all assessments that are now made for the payment of the principal or interest thereon, are hereby legalized."

The foregoing acts of the Legislature of Illinois compose all the legislation affecting the subject of controversy, and the sections, and parts of sections, above quoted are all of either of said acts affecting the bonds or coupons thereto attached.

2. Now, secondly, of the facts as they appear in the record affecting this controversy.

It appears from the evidence that the so-called election, held for the purpose of deciding whether the township would subscribe stock and issue its bonds to said railroad company, was held in the month of August, 1866, before the passage of the act of Feb. 28, 1867, incoprorating said company. It also appears that, at the time of the

election, there were not less than three hundred legal voters in Saint Joseph township; and it further appears that not to exceed seventy-five persons voted at such election, and that but a bare majority of those voting favored the issuing of the bonds. It also appears that no poll-book, or record of any kind whatever, was made or kept of such election. Nor was any record of, or transcript of the proceedings at such election, ever transmitted to the County Clerk. No evidence of such election appears, or ever has appeared, in his office. No petition was presented to the Town Clerk asking him to call an election. The Town Clerk also swears he never did call an election; nor never did post any notice calling such election; nor ever gave any other person authority to sign his name to any notice calling an election, for that purpose; nor did he ever sign his name to any such notice. In other words, the evidence in the case shows, affirmatively, that there has been no compliance with the statute. As to the foregoing facts, there is no dispute. It further appears that, over a year after this pretended election, the Supervisor issued and signed $25,000 worth of bonds, and delivered them to the railroad company. It also appears that the recital in the bonds, as to the date of the election, is not true, and that the election was not held on the day therein stated.

Now, the inquiry presents itself whether, under the two acts above referred to, and the facts as they appear in the record, these bonds are valid. This question arises upon the law, as presented to the jury in the instructions of the court below. The instructions contained two propositions, and are in the words following:

1. "The election held in August, 1866, as detailed in the evidence, was validated by the act of February 28th, 1867, so as to authorize defendant to subscribe for stock in the Danville, Urbana, Bloomington and Pekin Railroad, and to issue the bonds in question; and when the stock was subscribed, and the bonds issued, the bonds are binding

on the defendant, in the hands of a bona fide holder."

2. "The recitals in the bonds estop the defendant from denying the fact of a valid election, as against a *bona fide* holder of the bonds or coupons attached thereto."

To the giving of both of these instructions, plaintiff in error at the time objected; and which, being overruled by the court, the plaintiff at the time excepted.

I insist that both of these instructions are erroneous, and shall examine them in the inverse order stated.

I.

I deny that the township was bound by the recitals in these bonds, and therefore estopped from denying them.

1. The township of St. Joseph is a municipal corporation, and acts only through its officers or agents. This will be admitted.

2. The duties and authority of the agents or officers of a municipal corporation are defined and limited by law. This will be admitted.

3. The acts of officers of a municipal corporation, not authorized by law, cannot bind the corporation, and are void.

President & Trustees, of the Town of Petersburgh *vs.* Wm. Mapin *et al.*, 14 Ill., 193. Marshall County *vs.* Cook, 38 Ill., 44.

President & Trustees of Jacksonville *vs.* McConnell, 12 Ill., 138. Fitch *et al. vs.* Pinkam *et al.*, 4 Scam. (Ill. R.) 78; 2 Kent's Com., marginal p. 299.

Head & Armory *vs.* The Prov. Ins. Co., 2 Cranch, 167; 4 Wheat. 636. Beaty *vs.* Lessee of Knowlton, 4 Peters, 163. The Bank of Augusta *vs.* Earl, 13 Peters, 587. Runyon *vs.* Coster, 14 Peters, 122.

The People *vs.* Utica Ins. Co., 15 Johns' 358–383. The North River Ins. Co. *vs.* Lawrence, 3 Wend., 482. Sharp *vs.* Spear, 4 Hills (N. Y.) 76. Sharp *vs.* Johnson, 4 Hills (N. Y.) 92.

The foregoing authorities very clearly and conclusively show that

the statute must be strictly followed by the officers of municipal (as well as any other) corporation, and that whatever is done without the statute is void.

The officer of the corporation is simply its agent, and can do nothing more than is conferred by law upon his principal. That the agent cannot exceed his authority and bind his principal, is a very familiar doctrine; and so, if the agent exceed his authority, it has always been held that his principal is not bound, and *may show that he is not bound.* And so, too, it has always been held, that he who deals with an agent must know, at his peril, whether the agent has power to bind his principal; and if it shall turn out that there is a want of power, then the principal is not holden. And this doctrine applies to municipal corporations with peculiar force. Cooly, in his "Constitutional Limitations," at page 196, says that, "if in any case a party assumes to deal with a corporation, on the supposition that it possesses powers which it does not, * * he will not be permitted to maintain an action against the corporation, based upon its unauthorized action, and * * false representations of officers that the corporation possessed the power, or that the necessary preliminary action or steps had been taken, cannot have the effect to validate a contract otherwise void; * * and any person contracting with it *must take notice* of any want of authority which the public records would show." Swift *vs.* Williamsburgh, 24 Barb., 427, is a strong and clear case in point. In that case the Common Council had power to open, grade and pave streets, but only on petition of one-third of the land-owners within the assessment limits. A party made a contract with the corporation, on the false representation of the Council that the proper petition had been presented. Held, that "the law being public, and all the proceedings of the Council being public, and its acts matters of record, *all persons* were chargeable with notice of the law, and the proceedings under it; and that, notwithstanding the false representa-

tions of the officers of the corporation, no action would lie against the city for work done under the contract." And Goodrich *vs.* Detroit, 12 Mich., 279, is to the same point. Again, at page 215 of Cooley's Constitutional Limitations, where the author is speaking directly of municipal bonds, he says, "The first requisite to the validity of any such subscriptions or securities would seem, then, to be a special authority to make or issue them; an authority which does not reside in the general words in which the powers of local self-government are usually conferred, and which must be followed by the municipality in all essential particulars, or the subscription or security will be void," and * * "*any one* who becomes holder of these securities, even though they be negotiable in form, will take them with constructive notice of any want of power in the corporation to issue them, and cannot enforce them when their issue was unauthorized." Smith *vs.* Cheshire, 13 Gray, 318; Gould *vs.* Sterling, 23 N. Y., 458; Andora *vs.* Grafton, 7 N. H., 298; Clark *vs.* Des Moines, 19 Iowa, 209.

In Gould *vs.* Sterling, *supra*, it was held, where a town had issued negotiable bonds, which could only be issued when the written assent of two-thirds of the resident tax-payers of the town had been obtained and filed in the County Clerk's office, the bonds issued without such assent were invalid, and the purchaser of them "*cannot rely upon the recitals in the bonds that such assent had been obtained, but he must ascertain that fact for himself at his peril.*" This is a case directly in point against the first instruction of the court.

Halstead *vs.* Mayor, etc., New York, 5 Barb., 218, goes to the same extent, and decides that the bonds, in that case, being issued without authority, were void in the hands *of all persons;* and the judgment was affirmed in 3 N. Y., 430. And to the same point and effect are the cases of Baltimore *vs.* Eischback, 18 Md., 276, and Johnson *vs.* Common Council, 16 Ind., 227. Those who deal with corporations must take notice of the restrictions and limitations imposed by law,

and must see to it that the contracts they make with them are authorized by law. Brady *vs.* Mayor, etc, N. Y., 2 Bosw., 173; and see same case on appeal, 20 N. Y., 312.

In the case of Swift *vs.* Williamsburgh, *supra* (I quote from the opinion of the court), "If the plaintiff can recover, on the state of facts he has stated in his petition, then the restrictions and limitations which the Legislature sought to impose upon the powers of the Common Council will go for nothing. And yet these provisions are matters of substance, and are for the protection of the constituents of the Common Council. They were intended to protect the owners of land, and tax-payers of the city, as well against the frauds and impositions of contractors, * * as against the illegal acts of the Common Council employing the contractors." The requirements of the law, in Swift's case are like the requirements in the case at bar. There, one-third of the resident tax-payers were to petition in writing for the improvement desired. Here, a *majority* of all the legal voters in the town were required to vote for the subscription and the issue of the bonds, before it could be done. In neither case were the requirements of the law observed, and in both cases are the acts of the officers equally void. In both cases the power to act at all, was conferred by a public law, and so the acts in each case, of the officers of the corporation, were required to be a matter of record, and that requirement for the single purpose of giving all men interested, or intending to become interested in their acts, notice of what was done, in order that it might be seen whether there was a compliance with the law. And, indeed, if this is not the purpose and object of requiring municipal officers to keep a record of their acts, then the statute is a mere idle ceremony.

The authorities are uniform that an agent cannot enlarge his authority by his own representations. Floyd's Acceptances, 7 Wallace, 666; 13 N. Y, 632. And so, corporations, both municipal and pri-

vate, may dispute the authority of those who have attempted to bind them without authority. And this, too, whether the paper has passed into the hands of innocent holders or not. The authority of the agent is always open to inquiry.

City of Leavenworth *vs.* Rankin, 2 Kansas, 357. Kœler *vs.* Black River Co., 2 Bl., 715; 5 B. & A., 866. Clark *vs.* Des Moines, 19 Iowa, 209. Halstead *vs.* The Mayor, etc., 5 Barb., 218. Gould *vs.* Town of Sterling, 23 N. Y., 459. Treadwell *vs.* Commissioners, 11 Ohio St., 183. Goodrich *vs.* Detroit, 12 Mich., 279. Zottman *vs.* San Francisco, 20 Cal., 96. Herzo *vs.* San Francisco, 33 Cal., 145.

The foregoing authorities will all be found to forcibly and firmly adhere to the doctrine that the pretended authority of a municipal officer to bind a corporation may always be questioned and shown not to exist; and that, too, in cases where innocent holders seek to enforce their demands. If these authorities—selected as they are from many different States—fail in support of the proposition, then any further reference to a multitude of others, to the same effect, which might be cited, would accomplish no useful purpose.

I now call the attention of this court to some recent decisions of its own, where this very proposition which I am now endeavoring to establish, was affirmed, after the most elaborate argument and careful consideration by the court.

And, first, I will refer to the case of The Floyd Acceptances, 7 Wallace, 666. In this case Russell, Majors & Waddell had entered into very large contracts with John B. Floyd, then Secretary of War, to supply the army in Utah with certain supplies. These contracts required certain payments to be made by the Government as supplies were delivered to the army. The contracts required a vast expenditure of money by Majors & Co. for their fulfillment, and rendered it difficult, if not impossible, for the contractors to comply with the

terms of their contract and wait upon the Government until the times stipulated for their payment. It was thereupon agreed between them and the Secretary of War that, for the purpose of aiding them in carrying out their contracts and supplying the troops, that they—Russell, Majors & Co.—should be permitted to draw time drafts on the Secretary of War, and that he would accept them. These drafts were drawn on J. B. Floyd, Secretary of War, from time to time, to the amount of about $5,000,000, and indorsed by Majors, Russell & Co., and accepted by the Secretary of War, and so indorsed by him in his official capacity. By this means Russell & Co. was enabled to negotiate them and raise money. After these drafts became due, T. W. Pearce, among others—being innocent holders *in fact*—presented them for payment to the proper department, and payment was refused. Suit was then instituted in the Court of Claims, and judgment in that court for the Government, because the Secretary of War had no authority, by law, to accept and indorse negotiable paper for the Government. On appeal to this court, the only question was, whether the Secretary had power, by statute, custom or usage, to bind the Government by these acceptances. It was admitted that all these drafts, thus accepted, had gone into the hands of innocent holders—so far as they could be innocent under the law—and that they had paid their money for them. The drafts were negotiable, and had every indication of genuineness. To all human appearances, the Government was pledged for their redemption. No engraver's art ever made *municipal bonds* more inviting, or tended more to disarm inquiry, and lull the purchaser into fancied security, than did the genuine indorsement of "J. B. Floyd, Secretary of War," upon these drafts. Surely the purchaser of them might feel quite as sure that the honor of the Government was as much bound to recognize and honor the act of one of its great Secretaries, as that a township was bound to honor the act of one of its officers. And yet, in more

instances than one, had these humble municipalities been loudly berated for an attempt to dishonor the acts of their officers, when they were but interposing the *same plea*, and for the same reason, which was interposed by the United States in this very case.

And in that case, because there was a want of power to accept and indorse the drafts by the Secretary of War, the holders of the drafts were refused payment to the amount of about $5,000,000. And, as a matter of *law*, the opinion was unquestionably right, notwithstanding, in that particular case, it resulted in great hardship. The court, in that case, did not hesitate to announce the correct rule of law, because individuals must and did suffer terrible loss. This case, then, decides clearly and explicitly the principle *that holders of public securities, whether issued by Government, State or municipal officers, must know, at their peril, whether such officers had the lawful authority to issue the securities; and if such authority is wanting, then the security must fail, and no mere good faith will help him.*

But a still stronger case is *Marsh vs. The Board of Supervisors of Fulton County*, 8 Wallace, upon the point I am now contending for. Without here referring to the facts in that case; more than to say that it was a suit brought to recover upon railroad coupon bonds, which had been issued by the county of Fulton, and which had passed into hands of strangers, in the bond market, and for value paid. It was held by this court that there was a want of authority in the officer to issue the bonds, *and that, by reason thereof, the bonds were void.* And it was there earnestly contended by the bond holder, that they were *innocent purchasers*, and knew nothing, *in fact*, of the want of authority to issue the bonds. But the court overruled the objection, and say that, even granting that fact, it cannot help the bond holders, because the county had no general authority to contract and issue securities or obligations of that character. It was a case where the authority never existed—where the instrument might, with equal force, be

issued by any citizen of the county. It was a case, too, where the holder was bound to look to the action of the officers of the county, and ascertain whether the law had been so far *followed* by them as to justify the issue of the bonds. The authority must exist to contract, before any protection as an innocent purchaser can be claimed by the holder. * * In each case the person dealing with the agent, knowing that he acts only by virtue of a delegated power, must, at his peril, see that the paper upon which he relies comes within the power under which the agent acts. And this applies to every person who takes the paper afterwards, for it is to be kept in mind that the protection, which commercial usage throws around negotiable paper, "*can not be used to establish the authority by which it was originally issued.*"

Now I propound this question: If these bonds were void, was it in the power of the officer, who issued them without authority, to make them valid and bind the county, by simply stating in their face that they were issued by virtue of some law, and that the county and its property were pledged to their redemption and payment? Now, to answer this in the affirmative is simply absurd. To invest an officer with such power would enable him, in an hour, to bankrupt his county or town. Suppose he has power to issue $10,000 in bonds only, and that he issues in fact $100,000—all exactly alike, all certifying that they were issued by virtue of some law—will it be contended that the corporation is estopped from showing that $90,000 of these bonds are void and issued without authority? Or, suppose a valid law authorizes St. Joseph township to issue its bonds, after a majority of all its legal voters have so directed, at an election held for that purpose—is there any authority conferred on the Supervisor to issue such bonds, until he is so directed by such majority? Certainly not; for, if he can lawfully issue, with less than a majority of the votes, then he can issue without any election at all. The result of the argument, then,

is that, if it is not in the power of the officer to bind the corporation by his illegal acts, and that such illegal acts are void, then it follows that the corporation, when sued, *may* show that such acts were unauthorized, either by the law, or for the want of acts required to be done before the bonds can issue. Otherwise, a void and illegal act would stand on the same footing with a legal and valid one, because the law would not permit the difference to be shown. The argument discloses its own weakness. And yet the first proposition of the instructions to the jury, in the case at bar, states that the township is estopped from denying the recitals in the bond. In other words, no matter how illegal have been the acts of the Supervisor, no matter whether the law has been complied with or not, no matter whether the citizens of St. Joseph township have authorized these bonds or not—these *printed recitals*, in these bonds furnished by the railroad company, shall not be contradicted.

It contradicts all the decisions of this and every other court, in that it states to the purchaser of these bonds that he need not look to the authority upon which the officer acts, nor whether the conditions of the law have been complied with—*look only to the recitals of the bond and you shall be safe.* Such a rule would place every municipality in the land at the mercy of its officers, and would throw down every statutory limitation and safeguard enacted for the protection of the public. It announces a rule directly in the teeth of every law governing commercial paper. As well might it be contended that the recital, "*for value received*," found upon the face of every promissory note, was conclusive of that fact, and that the maker would be estopped from denying the statement; and yet, I apprehend, no one has ever been found with sufficient self-assurance to contend that, that might be done, in the hands of a holder chargeable with notice, or one receiving it after due, and in either case holding it, as the bond holder holds his bond, subject to the equity of the alleged maker. Nor will it do

to hold that the elaborate finish and elegant workmanship of the engraver, with which all these bonds are adorned and made beautiful, for the purpose of enticing the unwary to exchange their money for them, shall be taken as sufficient and conclusive evidence of their genuine quality; for these are but the showy gewgaws and tinselry used by the artful and designing to make their worthless paper saleable in the market. And yet, in Hackett *vs.* Mercer County, 7 Wallace, 87, this is the first, if not the strongest reason, urged by counsel for the bond holder for upholding the bonds.

Then I maintain that these two cases, decided by this court, are conclusive against the instruction of the court, that the township was bound by the recitals in the bonds. But it will be contended that this court has laid down a different rule in some of the earlier cases—a rule which does not require a purchaser to take notice of want of power in the corporation to issue the bonds. And what are known as the Iowa Cases are referred to as maintaining that proposition. That there is an *apparent* conflict between the cases from Iowa and the later ones to which I have before referred, may be true; and yet a careful examination of the decisions will show no real conflict.

I will examine some of these cases, and will first take the case of Mercer County *vs.* Hackett, 1 Wallace, 83. In this case the Legislature of Pennsylania, in 1852, authorized the Commissioners of Mercer county, in that State, to subscribe stock to a certain railroad named. The act contained this proviso: "Provided the subscription shall be made subject to the following restrictions and limitations, and in no other manner or way whatever, viz: All such subscriptions shall be made by the County Commissioners, and shall be made by them after, and not before, the amount of such subscriptions shall have been designated, advised and recommended by the Grand Jury of the county. And such bonds shall, in no case or under any pretence, be sold, assigned or trans-

ferred by said railroad company, at less than the par value thereof."

Under this act a large number of bonds were issued. One of them came into the hands of Hackett, a stranger, without notice, in fact, of what compliance there had been with the law. One of the coupons was presented for payment, and refused, and suit brought. The defense was, that the "amount of such subscription had not been designated, advised and recommended by the Grand Jury of the county." What the Grand Jury did was as follows: "We (the Grand Jury) would recommend the Commissioners of Mercer county to subscribe to the capital stock of the company, to such an amount, and under such restrictions, as may be required by the act of the Assembly authorizing them to subscribe stock to said road, to an amount not exceeding $150,000."

Now, whether the above recommendation of the Grand Jury was a substantial compliance with the law, was the real and only question of any importance in that case, and the court hold that the act of the Grand Jury was a substantial compliance with the law, and therefore there was no want of power in the Commissioners, in that case, to execute the bonds.

It is true Mr. Justice Grier, in delivering the opinion of that court, says, "that when bonds, on their face, import a compliance with the law under which they were issued, the purchaser is not bound to look further." This statement was made in the argument, and in no manner necessary to the decision, and is so directly opposed to the doctine in Floyd's Acceptances, 7 Wallace, and the case of Marsh *vs.* Fulton County, 10 Wallace, before referred to, that it cannot be regarded as authority; but granting it all the force of a decision of a point before the court, it still must stand overruled by the other later cases of this court alone, to say nothing of all the other cases before referred to, which do most clearly and certainly deny the position there assumed.

The next case relied upon by defendant in error is that of Gilpeck *vs.* City of Dubuque, 1 Wallace, 175.

This was the first of a long series of cases which came to this court from Iowa, upon suits brought against municipal corporations, for refusal to pay bonds or coupons, which had before then been issued in vast quantities all over that State, to aid railroads. The Legislature of Iowa had passed many acts authorizing the issuing of these bonds by municipal corporations. And, in pursuance of the power thus conferred, as contended on one hand and denied on the other, the bonds were issued—right or wrong—and passed into the hands of strangers, for value paid.

The question in this case was, whether the acts authorizing the subscriptions, and the issue of the bonds, are constitutional. It was not claimed that the officer did not follow the law. It was argued by counsel for the City of Dubuque that, notwithstanding the acts of the Legislature, and seven or eight decisions of the Supreme Court of Iowa, sustaining these acts as valid laws, and sustaining the bond issued under them, the laws were still unconstitutional and void, as determined by the later case of The State of Iowa, *ex rel.*, etc., *vs.* The County of Wapello, 13 Iowa, 390, in which case the Supreme Court of that State had overruled all its former decisions, and held the laws of the State, conferring power upon municipalities to aid railroads by its bonds void. The material question, then, was whether the court would follow the *latest* decision of the State court, overturning all its former decisions, or whether it would follow the law, as laid down in seven preceding decisions, sustaining the law, and covering a period of ten years. This court say, they will follow the latest *settled decisions* of the State court, but decline to concede that the last decision of the State of Iowa (being in conflict with all its preceding ones) is of that character, and therefore follow the former decision of the State court sustaining the law and the bonds. And

this is the ground upon which the bond were sustained in that case. Mr. Justice Swayne, in referring, in the very outset of his opinion, to the *limitations* of the act conferring the power upon the city to issue the bonds in question, says that "*the qualifications of the section conferring the power are not now in question.*" So far as can be seen from the report of the case, the statute had been complied with, and the only question before the court was, whether the act was constitutional, and did or did not confer the power it purported to do upon the city. And, because the Supreme Court of Iowa, in numerous cases, had held the act valid, this court say that, in accordance with the uniform rule of this court, they will follow that construction. This, then, was all that was fairly and really in that case, and whatever is outside of this is but *dictum*, and is no authority.

True, it is in that same opinion we find this language (I quote): "When a corporation has power, *under any circumstances*, to issue negotiable securities, the *bona fide* holder has a right to presume they were issued under the circumstances which give the requisite authority, and they are no more liable to be impeached for any infirmity in the hands of such a holder, *than any other commercial paper.*"

Now this declaration of the court falls very far short of saying that a bond issued by a corporation, without authority, is valid even in the hands of an innocent holder for value. It simply declares that the *presumption* shall be in favor of the regularity of the proceedings, and that such bond shall be treated like any other negotiable paper. The presumption is not a *conclusive* one, and may be defeated. The declaration is, that such a bond shall stand upon the same footing with a note. Suppose, now, my agent is authorized to execute a promissory note to A. for $100, in my name, and, instead of executing for $100, he executes it for $1,000: shall I be bound? Or, suppose he, having authority to execute but one note, in fact executes ten. Or, having power to execute to A. only, he executes to B. also: shall I

be bound? If my agent can thus disregard all the restrictions I place upon his authority, and bind me by his unauthorized acts, then there is no difference between a general agency, to do all things, and a limited one, to do only some particular thing: and every person is at the mercy of his agent. No one can pretend that a principal would be estopped from showing that the acts of his agent were unauthorized. Nor can the officers of corporations stand upon higher or different ground. The court, in using this language, never intended to say, nor *does it say*, that a want of authority, or an abuse of authority, in an agent or an officer, may not be shown, to defeat a *presumption* which may exist in favor of the acts of the agent. Such doctrine would be repugnant to the plainest dictates of reason and justice, and subversive of all law and authority.

But, to proceed a step further—and in doing so I anticipate the claim of defendant in error, under this language of the court, in the case now before us, and all other cases or language of like character. Referring again to the language of the court, that "when a corporation has POWER UNDER ANY CIRCUMSTANCES to issue negotiable securities," etc., the *bona fide* holder may presume they were issued "in conformity with the power." Now, suppose the Legislature enacts a valid statute, authorizing St. Joseph, or any other township, to issue $100,000 worth of bonds, in case a majority of all the legal voters so direct, at an election. Now this act, under certain *circumstances* (and which is included under the more general term, "any circumstances"), confers the *power* on the corporation to issue the bonds. Now, suppose the officer of the corporation, possessing this naked power, disregard the qualifications or limitations of the act requiring an election, and proceed at once to issue the bonds, and recite in the face of them that they were issued in pursuance of the statute conferring the *power* on them: would it be contended that such bonds would bind the township, and that the recitals on the face of the bond might not

be shown to be false? In other words, does the mere naked existence of a valid law, containing limitations and restrictions, authorize municipal officers to disregard all such limitations and restrictions, and bind the citizen and his property, without his knowledge or consent, and subject him to the payment of enormous taxation, for 10, 20 or 40 years, for the payment of mortgages, which the officers of township have placed on his land, in defiance of law or justice? And yet, if municipal bonds may be issued, by virtue of a mere naked *power*, residing in the corporation, by statute, without complying with previous conditions of the statute, and the citizen be estopped from inquiry into the legality of the proceedings, then, indeed, all this follows, and every safeguard, which the Legislature intended for the citizen, and all the protection the citizen supposed he possessed, is mere vapor, and worth less than the paper it is written on.

And yet, monstrous as this doctrine is—abhorrent as it is to all sense of right and justice—it is nothing more, nor less, than the instruction given by the court to the jury in the case at bar. And it is contended, too, that the authority for such instruction is found in *Mercer County vs. Hackett*, before referred to, and in this same case of *Gilpeck vs. Dubuque*. And to this claim I answer, first, that no *authority* is found, in either of these cases for the instruction—that any language, found in either of them, intimating such doctrine, is but *dictum*, and binds no one; and second, that, if such authority can be found in either of these cases, or in any other case, it has been overruled in the later cases, of *Floyd's Acceptances* and *Marsh vs. Fulton County*, *supra*.

But it will be contended by defendant in error that the case of the *Commissioners of Knox County vs. Aspinwall*, 21 Howard, 544, is in point, against the position I have assumed; but it is not so, as a careful examination of that case will show. In that case, the authority to issue bonds and subscribe stock was conferred on the *Commis-*

sioners, and not on the *corporation* which they represented. The bonds were to be issued on a vote of the people of the county, in favor of the subscription. The bonds were issued, and, on suit to recover interest upon them, it was objected that the notices required by the statute had not been given. The bonds got into the hands of a *bona fide* holder. This court, in deciding the case, say, that the objection would be fatal but for the fact that the Legislature, in giving the *Board of Commissioners* authority to issue the bonds, conferred upon them the right and duty of determining, before they issued the bonds, whether or no the necessary notice had been given prior to holding the election. And, inasmuch as it was the duty of the Board to determine that question—being the legislative body of the county—before the bonds were issued, it should be intended that the Board did so determine, and found the fact in favor of the authority to issue the bonds, and that their determination upon that point should be final. The whole matter was placed in the hands of the Board of Commissioners. No provision was made for keeping a record of the election, as in the case at bar. But, between that case and the one at bar, there is a wide and substantial difference. Here the authority was given to the township, under certain circumstances, to issue its bonds, and *not to the township officers*. In the former case, the authority was to the *Commissioners*, who were authorized to bind the county; but, in the latter case, the authority is to the *corporation*, by name, and the officer of the township has no authority whatever conferred upon him, and the only manner in which he can act is simply in ministerial capacity. He can only act after the corporation acts; nor does the legislative act in question confer upon him any legislative capacity to determine any question for the corporation. He is to find his authority to execute the bonds, in question, in the record made at the election, and returned to the County Clerk's office. The law creating the Supervisor of the township, makes him a mere ministerial

officer. He has nowhere conferred upon him the authority to bind the township to do anything. No presumption can be indulged in favor of his acts.

The official duties of the Supervisor under the general law of the State, are found in the 8th article of the Township Organization of Illinois, Haine's Township Organization, 1870, page 123–4, and are set down as follows:

SEC. 1. He is to receive and pay out the money collected for town charges, except for bridges and highways, and he must give bond.

SEC. 2. He shall prosecute, in the name of the town, for penalties under the sum of fifty dollars.

SEC. 3. He shall keep a book showing his accounts.

SEC. 4. He shall account for the disbursement of the money to the justices of the town.

SEC. 6. Requires the justices to certify in the book a statement of the condition of the Supervisor's accounts.

SEC. 7. He shall be a member of the County Board of Supervisors, and attend their meetings.

SEC. 8. He shall receive and lay before the Auditor the accounts against the township.

The foregoing show all his powers.

In the case of Knox county, the Commissioners were attempting to impeach their *own* acts; but, in this, the township propose to impeach the acts and false statements of its officer, who was not authorized to bind the township, but by its direction; and, that it never did authorize the officer to subscribe the stock and issue the bonds in controversy. In Knox county, the authority conferred was legislative and judicial—in this case, it was purely ministerial; the former being governed by a body of men, entrusted with the whole financial government of the affairs of the county—the latter, only a servant. In the

former, no notice is provided, except the naked determination of the Commissioners to issue the bonds—in the latter, all that is done is to be matter of record, and notice to all.

But now, following Gilpeck's case to its legitimate result, and it becomes material to inquire what has been the decision of the Supreme Court of Illinois, in construing this class of statutes, which authorized municipal corporations to aid in the construction of railroads; for, by the uniform rule of this court, the *settled* decisions of the highest courts in the State, construing its own statutes, becomes a part of the law, and will be followed by this court. For this, Gilpeck's case is an authority in point, and the only proposition for which it is an authority. I will examine some of the decisions of the Supreme Court of Illinois, and in their order.

1. *Prettyman vs. Supervisors of Tazewell County*, 19 Ill., 415. In this case, certain bonds had been issued by the county of Tazewell, by virtue of a supposed statutory authority, and delivered to the railroad company to which they had been voted. A bill was filed against the railroad, praying that it might be restrained from selling the bonds; and, among other reasons assigned for this relief was, that the bonds had been so drawn as to be *payable at New York*, when the statute only authorized the *interest* to be made payable at New York, and was silent upon the point as to where the principal should be paid. The Supreme Court sustained this objection, and say that it is such a departure from the statute as to avoid the bonds; and that a county has no authority, except it be conferred by statute, to make its bonds payable anywhere, except at its own treasury. The injunction was made perpetual.

2. *Fulton County vs. Miss. & Wabash R. R. Co.*, 21 Ill., 338. The railroad company named in this case was chartered in 1853, and granted certain powers; among others, to build a continuous line of road, from Warsaw, east, to the east line of the State. In 1857 the

charter of the company was amended, and, among other things, provided for dividing the original road into three divisions—naming the limits of each. It was also provided that the amendments should not operate to discharge or release any former subscriptions made to the company. It was held by the Supreme Court that the amendment operated to release the county from its former subscription to the original road, and invalidated the bonds. But a further question was made and decided, viz.: as to the legality of the election. The county, in submitting the question of subscription to the citizens of the county, instead of submitting the question of subscribing stock to the Mississippi and Wabash road *alone*, include *another* road, viz.: the Petersburg and Springfield R. R., at the same time, and required the citizens to pass upon the question of subscribing to *both* of these roads at the same time. And the Supreme Court say, the statute only authorized the submission for one road at a time—or rather that it did not confer the power to submit the question in this double form; and, for this departure from the statutory requirement, by the officers of the county, in submitting the question to a vote of the people, the Supreme Court say, that "the order made by the Board of Supervisors, in thus obtaining the vote of the people, is unauthorized by the act."

3. *The People, ex rel., vs. The County of Tazewell*, 22 Ill., 147. In this case, the relator, a railroad company, prayed for a mandamus, to compel Tazewell county to deliver certain bonds, before then voted by the county to aid in building the road. The authority or power was conferred by statute. The election held and resulted in a majority for issuing the bonds. But in this case, as in the one last above referred to, the officer of the county submitted the proposition to aid two roads named in the notice, instead of the one which was the relator. And the court hold again, that for this departure from the statute, the election was void, and conferred no authority to issue the bonds; and the mandamus was refused.

4. *Supervisors of Schuyler County vs. The People, ex rel. The Rock Island & Alton R. R. Co.*, 25 Ill., 181. 5. *Same vs. Farwell*, 25 *ib.*, 181.

These two cases were considered together. The act incorporating the railroad named was passed in 1855, and, among other things, it was provided that each of the counties through which it should be located or run, should have the power and right, by the *County Court* of such counties, to subscribe for stock in said railroad, and to borrow money for the purpose of aiding the same, etc.; to issue and dispose of their bonds to said company. And each of said counties were ordered, by and through their County Court, to order an election in June, 1855, to determine whether such counties would take stock in such road, etc. If a majority were in favor of taking stock, the County Court was to subscribe not less than $50,000 nor more than $100,000. After the passage of this act, the Board of Supervisors ordered the election, as provided, which resulted in a majority being in favor of subscription; and the subscription was afterwards made, in conformity with the vote by the Board of Supervisors, who had succeeded the County Court, and $59,000 of the bonds signed and delivered, and $16,000 yet not delivered. Petition for mandamus, to compel a delivery of the remaining bonds. It will be seen, the act required all these things to be done by the County Court, but they were, in fact, done by the Board of Supervisors, who were the legal successors of the County Court. The question was, whether the acts of the Board of Supervisors were binding on the county. The Supreme Court say, "*We see no way of avoiding the conclusion that they are not.*"

6. *Marshall County vs. Cook*, 38, Ill., 44. In this case, the County Court of Marshall county, in 1853, ordered an election, to ascertain whether the county should subscribe $100,000 to the Western Air-line R. R. Co.; but, when the election was held, the county was acting

under township organization, and the Board of Supervisors had succeeded the County Court. Afterwards, the Supervisors made an order that the county subscribe that amount, which was done; it was also ordered by them that the bonds issue and be delivered to the road, which was also done. The bonds passed into the hands of strangers, and in this case Cook, one of the holders, presented a coupon for payment, which was refused, and suit accordingly. The defense was, that the statute gave the Supervisors no authority, *by name*, to issue the bonds and bind the county, notwithstanding they were the successors of the County Court, and succeeded to all their rights and duties. The Supreme Court say, these bonds were issued without such an election as the law requires; nor can an election, ordered and held without authority of law, be held to answer the requirements of the statute. The statute has declared that the bonds shall not issue unless in pursuance of authority conferred by the vote of a majority in favor of such subscription, at an election *called in the mode pointed out* by the statute. And the court holds, that if this is not done, it makes no matter who holds the bonds, they are void in the hands of everybody; that all persons are chargeable with notice of want of authority in the officer; that it is simply a question of power, and not of good faith; and further, that the maxim of *caveat emptor* applies to the acts of public officers. The bonds were declared void.

Now, here are seven decisions of the Supreme Court of Illinois, running from 1856 to 1866, construing statutes conferring power on municipal corporations to aid railroads by their bonds and subscriptions—and not in a single instance have they held that a mere naked statutory *power* to issue their bonds has been sufficient to uphold bonds, with no better foundation; but, on the contrary, in every case they have held that there must be a substantial compliance with *all* the requirements of the law, before the officer acting under it can

bind the municipality. And that court, too, in all these cases, have steadily refused to recognize any holders of this class of securities as being without notice, but charge them, at their peril, with notice of the acts of public officers. Nor have they ever departed, by any vacillation, from this wholesome rule. Every person who has ever bought an Illinois bond, has been notified in advance, by the repeated decisions of the Supreme Court, that he took them at his peril. All this time, these decisions have been a part of every statute upon that subject; and such statutes—and they are all alike in principle—are to be construed by the light of the decisions of the Supreme Court.

I claim, then, that Gilpeck's case is an authority for supporting and following these decisions of the Supreme Court of Illinois. I maintain that it makes no difference in principle, that in some of these cases the bonds had not been issued; for the main and substantial question, in all of them, was, *whether the municipal officers were bound to follow the provisions and limitations of the statute*, to bind the corporation. And it will be seen that, in every single one of these cases, the court explicitly declare, that there must be a substantial compliance with the statute. And these decisions will be read in vain to find any sanction to the doctrine that a mere *naked authority*, vested in the corporation by the statute, validates the bonds, not issued in compliance with all the requirements of the statute.

Nor are the decisions, above referred to, the only decisions of the Supreme Court of Illinois holding the same doctrine. I cite the following, in addition, holding the same principle:

President and Trustees, etc., *vs.* McConnell, 12 Ill,, 138. Fitch *et al. vs.* Pinkard, 4 Scam. (Ill.), 78. Town of Petersburgh *vs.* Mappin, 14 Ill., 193. The City of Pekin *v s.* Reynonalds, 31 Ill, 529. Laswell *vs.* Hikox, 4 Scam. (Ill. R.), 181.

Indeed, this doctrine has been steadily adhered to, in construing statutes of this character, and the acts of municipal officers under

them, through the entire judicial history of this State. If, then, the long and uniform rule of this court is adhered to in this case, in following the settled decisions of the highest State court, in construing its own statutes, this judgment will be reversed, and the instructions held erroneous. But it will be strongly urged that these decisions shall be disregarded. Any departure from a rigid adherence to this rule is as unjust as it is dangerous. Already the State courts are, to a very large extent, shorn and robbed of their rightful jurisdiction, of adjudicating upon these vast moneyed questions, affecting the most sacred interests of their citizens, and for no other reason, on the part of the bond holder, than to escape the operation and construction of the State laws, as defined and construed by the State courts. And the result of this course is, that the citizens of the State of Illinois, who looked to their own statutes, and the decisions of their own highest courts, to discern their rights and liabilities, are tried at another bar.

It is a cherished principle of the law, and ought to be upheld, that every contract shall be construed by the law of the place where it is made, and that the law governing contracts, in force at the time when, and in the place where, such contracts are made, forms a part of every contract. The justice and reason of such a rule is self-evident. It never was intended by the framers of our Government that the jurisdiction of the United States courts should be used as a shield to escape the just and rightful jurisdiction of the State courts, for the purpose of avoiding and nullifying their decisions, upon the most vital interest of the citizen. But, so long as this jurisdiction may be invoked, I do most earnestly contend that the judgment shall be in conformity with the decisions of the State courts.

4. I shall, in the next place, inquire whether there was a substantial compliance, on the part of the township, or its officers, with the act empowering it to subscribe stock to this road and to issue its bonds.

I have already said that the pretended election held in this township, for the purpose of determining whether bonds should be issued, was held about one year before either of the acts of the Legislature, above referred to, were passed. The only reference to this election, under the act of Feb. 28, 1867, is the proviso to Sec. 13. Prior to the passage of that act, townships had no authority whatever, by any general statute, to vote their aid to railroads. The proviso provides that, "when elections have already been held, *and a majority of the legal voters of any township were in favor of a subscription to said railroad*, then, and in that case, no other election need be had; and the amount so voted shall be subscribed, as in this act provided. And SUCH elections are hereby declared legal and valid, as though this act had been in force at the time thereof, and all the provisions hereof had been complied with."

Without this proviso, there is no authority for the election, and its only vitality depends upon its conformity to the proviso. Under this proviso, there must be a majority of all the legal voters of the township voting in favor of such subscriptions. When this has been done, then the proviso declares that "*such*" elections are valid; and subscription, made after a majority of all the voters of the township have authorized it, is good and validated; but without "such" election, as a previous condition, the proviso confers no authority to subscribe stock or issue bonds. There is no pretense that a majority of the legal voters of the township voted at this election, much less that such majority voted for the bonds. The highest number claimed by any witness who voted at that election is 78. Only a bare majority of these voted for the subscription—the others against it. All the witnesses say, there were resident in the township, at the time of this election, at least 200 legal voters. The election, therefore, did not bring the township within the proviso, and, there being no subsequent election, it follows, beyond all hope of escape and denial, that there

was no authority of any kind to issue these bonds; and, if not, then they are simply void.

But it will be contended by defendant in error that, because the 14th section of the act, in referring to elections which should in the future be held, under the conditions of the act, requres only a majority of all those *voting*, to give power and authority to subscribe stock, that therefore the court shall intend that the Legislature *meant* to say the same thing in the proviso to the 13th section. But the most casual inspection will show that this claim cannot be sustained. The proviso is complete in itself, and directs the subscription to be made, and it in no manner depends upon the 14th section. This is apparent, from the fact that the 14th section directs that, after the election therein provided for, and in the manner required, the subscription shall be made, etc., and proceeds to point out the details, under the election there provided for. Now, if the elections held prior to the passage of the act, were to be determined by the same number or proportion of the legal voters of the township, as in elections held after its passage, it would certainly have been very easy for the Legislature to have said so, and it would have been wholly unnecessary to have pointed out the details of the different elections, in immediate juxtaposition; if the same conditions were required, and the same ratio of voters required, in both elections. And if it were necessary to assign a reason for a statute, it would be very readily seen why a majority of all the legal voters in the township should sanction a measure of this importance, before the passage of any law upon the subject, governing such an election, where no provisions had been enacted, requiring petitions or notices, or for prescribing the mode, time or place for conducting such election; and when, in the absence of any statute controlling such election, a mere handful of interested parties might gather, without notice, and go through the forms of what they should be pleased to call an election; and thus very easily secure a

majority of all the legal voters *voting*. The Legislature could not have safely done less, in thus ratifying prior elections, than to require such a majority of votes cast for the subscription—than to require that a majority of *all the* legal voters in the township should favor the enterprise; because, the presence of that number of the voters at the election would preclude and prevent a clique of interested parties assembling, and binding the township without their consent. And the very character of the election which was held shows the wisdom and necessity of that provision. The notices of that election was of the most questionable character. They were signed by no one, and were put up by no authority, without petition, and failed to give notice to a fifth of the inhabitants. Many of those who were at the election were there by accident, and knew nothing of such election. The Supervisor himself, who seemed to engineer the thing, denounced the election as a fraud, the very next day after it was held, and refused to pay the clerks and judges for their attendance. No one was sworn to observe any law, no poll book was kept, no ballots preserved, nor any record, of any kind whatever, of the proceedings of that pretended election; and, to this day, not a scratch of a pen exists anywhere, to show that any such election was held, or what the result of it was. Every person who had anything to do with it denounced and regarded it as a fraud. Nor did a single citizen of that township ever suppose the Supervisor would attempt to subscribe stock and execute bonds under it. The Town Clerk swears he signed the bonds under protest, believing he had no authority to do so. All the circumstances surrounding this election show very clearly that the Legislature had the most cogent reasons for requiring the presence and the vote of a majority of *all* the legal voters at such an election, in favor of binding the township to assume this enormous burthen.

But under the 14th section no such strict requirement was necessary, because the election there provided for was to be held under the

forms of law, after a petition by twelve freeholders, and after due notice, and at the usual place of holding elections, and under circumstances that would insure the presence of those who were to be affected by the election, and after the matter had been canvassed and understood by the people. After all had been notified, and given fair and reasonable opportunity to attend and vote, there would then be no injustice in allowing a majority of those who felt sufficient interest in going and voting to decide the matter. These considerations, I think, show very clearly why the Legislature, in one case, required a majority of *all* the legal voters of the township to support the subscription, and in the other case only a majority of those voting.

There is also a proviso, under section 15, requiring the clerk of the election, under elections held prior to the passage of this law, to file with the County Clerk of the proper county, within ten days after the issuing of the bonds, a certificate of the vote under which they were issued, the amount of stock subscribed, and bonds issued, and the rate of interest. This never was done. The least reference to the law, and the proper place to find the record of the elections, required by the law, to make the bonds valid, would have shown defendant in error that the law had not been complied with in any particular, and that the recital in the face of the bonds was a naked and unmitigated falsehood. The evidence shows that the recital in the face of the bond, as to when the election was held, is not true; and this fact comes from defendant in error.

Can it be true that this township is estopped from showing that every recital in the face of these bonds is absolutely and wholly false? that they never did give the Supevisor any authority to issue them—that there never was any compliance with the statute—that, by the plain letter and spirit of this statute, these bonds were unauthorized and prohibited? If, indeed, this be the law, then what protection can any statute give to citizens in their corporate capacity? If a

total want of authority in a municipal officer to bind the township, combined with fraud and deceit of the worst character, may not be uncovered and shown against these pretended liabilities, then is the situation of the township pitiable indeed. Then, without authority of law, without the knowledge or consent of the citizen, the Supervisor —a mere irresponsible ministerial officer, of the humblest grade— may mortgage the property and earnings of his township without stint and without limit.

I think I have shown the first instruction wrong, and that the court erred in giving it.

II.

Did the act of Feb. 28, 1867, validate the election of August, 1866, as declared by the first instruction of the court? Clearly not. The proviso of section 13 of that act validates only such bonds and subscriptions as had been, or might be thereafter, made or issued in pursuance of *such* an election as therein required to be held, viz.: that after a majority of all the legal voters of a township had voted for the subscription and the bonds, then that kind of an election, and subscriptions made and bonds issued under it, were validated. But there is no warrant for saying that the statute cured acts done under an election wholly different from the one required by the statute. No such election as the statute declares to be curative of in its operation, was ever held. Before the terms or the spirit of the 13th section of that act can have effect, such election as is therein required must have been held. The proviso is, "that where elections may have already been held AND A MAJORITY OF THE LEGAL VOTERS OF ANY TOWNSHIP were in favor of a subscription, *then, and in that case*, no other election need be had; * * and SUCH elections are hereby declared to be legal and valid."

The language of this proviso is clear and explicit, and admits of

but one construction, and that is, that a majority of the legal voters must first vote for the subscription; and only "such," or, in other words of the same meaning—that kind of an election—is validated by the act. And if this is not so, then any number less than a majority of all the votes would answer the same purpose, and bind the township, without any of the formalities and requirements usually preceding an election. And, if the construction I contend for is not the true one, then five or ten votes in favor of this subscripition would have been just as effectual as the forty to bind the township. I contend that the forty were just as powerless, under that statute, as five would have been, to saddle a debt of this kind upon the township. The question is, all the time, one of power to do the act. And the equities of the case cannot be considered to favor or help either party; and, in this case, equity follows the law.

But it will be contended by defendant in error that the act of Feb. 25, 1869, Private Laws of Illinois, 1869, vol. 3, p. 274, operates to cure all the objections I make to the previous proceedings, prior to the statute of Feb. 28, 1867. But this is not so, for two reasons:

1. The act of Feb. 25, 1869, does not purport, in any way, to cure any of the objections which I have made, but relates to defects of a wholly different character.

2. The act of Feb. 25, 1869, intended to operate as a curative upon certain acts of township officers, is unconstitutional and void.

And, first, does this act, which was no doubt intended by the person who drafted it, operate to cure any of the objections urged against the validity of these bonds and coupons?

The most casual reading of the act will show that no such purpose was ever dreamed of. It was intended to obviate, and if it has any effect, did obviate a wholly different class of objections. The preamble recites, "that whereas certain township officers along the line

of, and through which the Danville, Urbana, Bloomington and Pekin Railroad passes, *have failed to keep a full and perfect record of elections called and held, and Township Clerks have failed to file with the County Clerk certificates, as required by section fifteen* of the amended article of association of said railroad; therefore,

SEC. 1. Be it enacted, etc., That where SUCH informalities and neglect may have occurred, and bonds have been issued, or may hereafter be issued, to aid in the construction of said railroad, that no *such neglect or omission*, on the part of township officers, shall in any way invalidate or impair the collection of said bonds."

The only thing cured, or attempted to be cured, by this act, is a supposed want of a sufficient *record* of elections. No effort is made in this act to supply and cure the fatal defect of the election itself. The fatal variance between the election and the act of Feb. 28, 1867, seems, was entirely overlooked in the bill.

This so-called curative act was, in fact, an act to legalize the defective proceedings of officers, and not, in any sense, an act to any way or manner, *add to, or take from, or change* the former act of incorporation. Not even the general and deceitful words, "*and for other purposes*," which are usually attached to the titles of private acts are found in this title.

No declaration, to the effect that, "whereas, a majority of all the voters, etc., have heretofore been required, etc., to enable certain townships to vote its aid and issue its bonds; and whereas, only a very small minority of the legal voters have indorsed this proposition—therefore, the said bonds shall nevertheless be good," etc. Nothing of this kind is found in the act. I have not assigned the neglect of the officers to keep a record of this election, as a sufficient ground for invalidating the bonds, nor do I think such neglect alone would be sufficient to defeat the bonds; but I do claim that a total absence of *any record*. ought and will charge a prudent man with notice. that no

such election as the law requires was ever held. The preamble and the act presupposes that *some* record of the election has been kept, but declares that such record has not been "*full and perfect.*"

This curative act, then, could not quiet inquiry, nor disarm suspicion; for, under this election, *no record was kept;* and for this reason, too, the curative act does not affect the election in this township, because it does not refer to any such election.

2. This last act is unconstitutional and void.

Section 23, of Art. III., of the Constitution of Illinois, of 1848, among other things, declares, "And no private or local law, which may be passed by the General Assembly, shall embrace more than one subject, and that shall be embraced in the title."

This constitutional provision was in force at the time of the passage of this law. The law is both a private and local law, and therefore the title of the act must disclose its subject matter. This it does not do. The title to this simply declares it to be "An act to amend an act entitled, "An act to amend articles of association of the Danville, Urbana, Bloomington and Pekin Railroad Company, and to extend the powers and confer a charter upon the same."

All the title this last act has, then, is simply that it purports to amend the former act conferring a charter on this company. Upon reference to the body of the act itself, it will be seen that it in no manner amends the former act; nor does it in the body of the act, purport to be an amendment. It does not add to, nor diminish, nor change a single word, line, or section of the other act, to which its title refers, and purports to amend.

There is not a shadow of connection between the title and body of the act. The language of the Constitution is that "the subject of the act *shall be expressed in the title*," and from this requirement there is no escape, unless the Constitution itself be disregarded. Judge Cooley, in his Constitutional Limitations, at page 143, says of this Constitutional requirement, that it was intended, *first*, to put a stop

to and prevent *hodge-podge* or "log-rolling" legislation. *Second*, to prevent surprise and fraud upon the legislature, by means of provisions in bills, of which their titles gave no intimation; and *third*, to fairly apprize the people, through such publication, of legislative proceedings as is usually made of the subjects of legislation, that are being considered, in order that they may have opportunity to be heard thereon if they desire.

In the case of *Connor vs. The City of New York*, 2 Sandf. Sup. Ct. R. 361, the court, in speaking of a like provision of the State Constitution, say that it was aimed at "log-rolling" legislation, by which bills to promote individual interests, and mere neighborhood projects, often at the expense of the people of a county at large, were secured in their passage.

The second section of this act, however, declares it to be a *public act;* but that does not help the matter. The act itself shows it to be both a "private" and "local" law. Whether it is a private or local law, or a public one, is to be determined by the contents of the body of the act.

The legislature cannot defeat this provision of the Constitution by any such shallow device as naming a purely private act a public one. *The Belleville, &c., Railroad Co. vs. Gregory, et. ux.*. 15 Ills. 20.

And this provision of the Constitution is mandatory. *People vs. Lawrence.* 36 Barb., 186. *The People ex. rel., &c., vs. Charles H. Mellin.* 32 Ills., 181.

For these reasons, then, this curative act is void, and cannot aid defendant in error.

I insist, then, that neither the original act, of Feb. 28, 1867, granting the charter to the railroad company, nor the act of Feb. 25, 1869, cures the election under which it is claimed the Supervisor obtained his authority to issue these bonds and the coupons attached. And I do this upon the supposition that this, as well as every other Court, will be governed by the plain and undeniable letter and spirit of these

acts; for if I may not confidently rely upon this presumption, then the argument is at an end. And the legislatures of the various States will hedge in vain their grants of great and valuable franchises, and charters with limitations, safeguards and conditions for the protection of the citizen. If the courts will look alone at the simple *grant of power* found in a single section of an act, and close its eyes to everything else found in the act, (as is contended was decided in Gilpeck's case), then it is in vain that the citizen can protect himself from the operation of the illegal and unauthorized acts of township and other municipal officers; then is the citizen powerless to prevent and defeat outrageous and oppressive taxation. Nor are these objections which I urge against the claim of defendant in error mere fancies of the brain. They are real, and go to the bottom and life of this whole controversy, and effect the inherent rights, not of these litigants alone, but of millions of others, whose lands and property are liable to be mortgaged to the railroads and bondholders of the county without their knowledge or consent.

The infinite number of arts and devices that are constantly resorted to, to obtain private acts and charters for the benefit of a few, the chicanery and fraud used to obtain subscriptions and bonds to replenish the empty treasuries of these gambling corporators, are known to all, and are among the great abuses of the age; and it will be a safe and just rule to hold, that whoever buys these public securities must inquire into the authority upon which they are issued, at his peril. The law will tell him what is required of the municipality before its officers can bind it to a contract. It will point out to him the records required, and where he can find such records, if any exist. Nor is it any answer to this, to say that this requirement would embarass the sale of these securities, because the purchaser may reside in New York or Boston, while the records would be in Illinois. Full and complete transcripts of these records, under the hand and seal of proper officers, showing a compliance with the law, could always

accompany the bond broker. And, even if this were not so, it would certainly be unjust, as well as illegal, to say, that the township should be at a disadvantage, because he who purchased its securities lived remote from it? The location of parties to negotiable paper has never been held to change the rights of either party to such paper; in other words, where the law charges a purchaser of negotiable paper with notice, such purchaser has never been released from such notice, because he lived remote from the source where he was compelled to procure his notice.

In conclusion: I submit this argument with a profound conviction and honest belief, that the positions I have taken are supported by the law, and justice, and pray that the judgment be reversed.

C. B. SMITH,

Of Counsel for Plaintiff in Error.

Wm Lawrence

of Counsel

No. 480.

Supreme Court of the United States.

DECEMBER TERM 1872.

SAINT JOSEPH TOWNSHIP,
Champaign County, Illinois,
Plaintiff in Error,

vs.

JAMES ROGERS.

Error to the Circuit Court of the United States for the Southern District of Illinois.

On the 8th of February, 1871, James Rogers commenced an action of assumpsit against Saint Joseph Township in the Circuit Court of the United States for the Southern District of Illinois.

The declaration contains the Common Counts.

On the trial at June term, 1871, the plaintiff below gave in evidence a bond dated October 1, 1867, issued by the supervisor and clerk of the township purporting that the township acknowledges itself to owe $500.00, which it promises to pay ——— on the 1st of October, 1877, with interest at ten per *centum* per annum, payable yearly on the 1st of October, on presentation of the coupons thereto attached.

The bond recites that it is issued by virtue of a law of the State of Illinois entitled: "An act to amend the articles of association of the Danville, Urbana, Bloomington and Pekin Railroad Company, and to extend the powers of and confer a charter upon the same," approved February 28, 1867, and in accordance with the vote of the electors of said township at the special election held August *fourteenth*, 1866, in accordance with said act. Plea general issue with an agreement of the parties that the defendants may give in evidence all matters which could be given under a special plea. The plaintiff gave in evidence the interest coupons due and unpaid.

The parol evidence offered, all of which is set out in a bill of exceptions, tends to prove that a vote of less than a majority of the electors of the township was had on the *fourth* of August, 1866, at which a majority of those voting voted in favor of the issue of bonds. It also tends to show that no vote was had. There is no evidence tending to show either that a majority of all the voters of the township voted, or that any vote was taken on the *fourteenth* of August. No record evidence exists of any vote.

The Court below charged the jury :

"The election held in August, 1866, as detailed in the evidence, was validated by the act of February 28, 1867, so as to authorize the defendant to subscribe for stock in the Danville, Urbana, Bloomington and Pekin Railroad, and to issue the bonds in question, and when the stock was subscribed and the bonds issued, the bonds are binding on the defendant in the hands of a bona-fide holder.

"The recitals in the bonds estop the defendant from denying the fact of a valid election as against a bona-fide holder of the bonds or coupons attached thereto."

The plaintiff below had a verdict. Defendant moved for a new trial, which was overruled and the Court rendered judgment for the plaintiff. Exception was duly taken by defendant below to the admission of evidence, the charge of the Court, the overruling of the motion for a new trial and the rendition of the judgment.

The Statutes relied upon are as follow:

"An act to amend the articles of association of the Danville, Urbana, Bloomington and Pekin Railroad Company, and to extend the powers of and confer a charter upon the same," approved February 28, 1867.

Section 12. To further aid in the construction of said road by said company, any incorporated town or townships, in counties acting under the township organization law along the route of said road, may subscribe to the capital stock of said company in any sum not exceeding two hundred and fifty thousand dollars.

Section 13. No such subscription shall be made until the question has been submitted to the legal voters of such incorporation, town or township in which the subscription is proposed to be made. And the clerk of each of said towns or townships is hereby required, upon the presentation of a petition signed by at least ten citizens who are legal voters and tax-payers of such town or townships for which he is clerk, and in which petition the amount proposed to be subscribed shall be stated, to post up notices in at least three public places in each town or township, which notice shall be posted not less than thirty days before the day of holding such election, notifying the legal voters of such town or township to meet at the usual place of holding elections in such town or township, or some other convenient place named in such notice, for the purpose of voting for or against such subscription, *provided*, that where elections may have already been held, and a majority of the legal voters of any township or incorporated town were in favor of a subscription to said railroad, then, and in that case, no other election need be had; and the amount so voted for shall be subscribed as in this act provided; and such elections are hereby declared to be legal and valid, as though this act had been in force at the time thereof; and all the provisions hereof had been complied with.

Section 14. If it shall appear that a majority of all the legal voters of such towns or townships, voting at such election, have voted "for subscription," it shall be the duty of the president of the board of trustees, or other chief executive officer, if in incorporated towns, and of the supervisor in townships, to subscribe to the capital stock of said railroad company, in the name of such town or township, the amount so voted to be subscribed, and to receive from said company the proper certificates therefor. He shall also execute to said company, in the name of such town or townships, bonds bearing interest at ten per cent. per annum, which bonds shall run for a term of not more than twenty years, and the interest on the same shall be made payable annually; and which bonds shall be signed by such president, executive officer, or supervisor, and be attested by the clerk of the town or township in whose name the bonds are issued, and it shall be his duty to make out a record of the issuing of said bonds. Said bonds shall be delivered to the president or secretary of said company, for the use of said company. And when any city or county shall hereafter vote to make subscription, as aforesaid, the chairman of the board of supervisors of such county, and the mayor of such city shall be required to subscribe to the capital stock of said company the amount so voted.

Section 15. "It shall be the duty of the clerk of any such town or township in which a vote shall be given in favor of subscription, within ten days thereafter, to transmit to the county clerk of their respective counties a transcript or statement of the vote given, and the amount so voted to be subscribed, and the rate of interest to be paid, *provided* that where elections may have been held as aforesaid, it shall be the duty of the town clerks to file with the county clerks of their respective counties, within ten days after the issuing of said bonds, certificates of the votes of their towns, the amount of stock voted to be subscribed, the amount of bonds issued, and the rate of interest payable thereon."

An act to amend articles of association of the Danville, Urbana, Bloomington and Pekin Railroad Company, and to extend the powers of and confer a charter upon the same, approved February 25, 1869.

PREAMBLE.

WHEREAS, Certain township officers along the line and through which the Danville, Urbana, Bloomington and Pekin Railroad passes, have failed to keep a full and perfect record of elections called and held, and township clerks have failed to file with the county clerk certificates, as required by section fifteen (15) of the amended articles of association of said railroad, therefore

Section 1. *Be it enacted, etc.*

That where such informalities and neglect may have occurred, and bonds have been issued, or may hereafter be issued, to aid in the construction of said railroad, that no such neglect or omission, on the part of township officers, shall in any way invalidate or impair the collection of said bonds, both principal and interest, as they may respectively fall due, and all assessments that are now made for the payment of the principal or the interest thereon is hereby legalized, and the township collectors and county treasurers are hereby authorized and empowered to enforce the collection and payment of said tax, as is now provided by law for the collection of all other taxes.

The case is now in this Court on error.

The very able argument of Counsel, with whom I am associated, sufficiently discusses many points, which it is therefore unnecessary for me to consider.

Against the validity of the bonds in controversy, I maintain propositions hereafter stated.

PROPOSITION I.

Negotiable bonds issued by a municipal corporation, without any authority of law, are void even in the hands of an innocent purchaser.

This proposition is so manifest that it really requires no argument. I therefore cite some authorities in support of it, more for the purpose of calling attention to the sources from which they are taken for use in other propositions maintained in this brief, than for any real necessity here.

In *Marsh vs. Fulton County*. 10 Wallace, 676, it is held that:

"Where county bonds to a railroad company are issued without any authority, they are invalid in the hands of an innocent purchaser.

"The authority to contract must exist before any protection, as innocent purchaser, can be claimed by the holder."

This then is the rule of the highest authority—the Supreme Court of the United States.

In *Gelpeke vs. the City of Dubuque*. 1 Wallace, 175, the Court, in considering the validity of bonds issued by the city under a statute upon a vote of the citizens, say:

"The whole case resolves itself into a question of the power of the City to issue bonds for the purpose stated."

The rule was adopted on *Floyd's Acceptances*. 7 Wallace, 676.

It is the rule in Illinois; the laws of which State are involved in this case.

In *Marshall County vs. Cook*. 38 Illinois, 44, the Supreme Court of that State held that:

"All persons dealing in securities, issued by a municipal corporation, are chargeable with notice of a want of authority to issue them.

"Nor will the negotiable character of such securities protect a purchaser, before maturity, against the consequences of a want of authority to issue them."

Clark vs. Supervisors, etc. 27 Illinois, 305, 308.

Fulton County vs. M. & W. R. 21 Illinois, 373.

People vs. Tazwell. 22 Illinois, 310.

It is the rule in New York.

Halstead vs. Mayor, &c., New York. 5 Barb., 218, affirmed, 3 New York, 430. An action was brought upon warrants drawn by the corporation of

New York upon its treasurer not in the course of its proper and legitimate business. It was held that the corporation under its charter had no *general* power to issue negotiable paper, though not being prohibited by law, it might do so for any debt contracted in the course of its proper legitimate business. Edwards, J., said:

"Every person who takes their negotiable paper is bound to know the extent of their powers, and is presumed to receive it with a full knowledge that they have only a *limited and conditional power* to issue it. He is thus put on his inquiry and takes it at his peril. * * The drafts in question not having been issued by the defendants in their proper and legitimate business are void in the hands of the plaintiff, although received by him without actual notice of their consideration."

Dunnesburg vs. Jenkins. 40 Barb., New York, 574.

And so in other States.

Rochester vs. Alfred Bank. 13 Wisconsin, 432.

Aurora vs. West. 22 Indiana, 38.

Hopple vs. Brown Tp. 13 Ohio St. R., 322.

It is the rule found in elementary works:

"As the doings of these (municipal) corporations are matters of public record, and they have no general power to issue negotiable securities, any one who becomes holder of such securities, even though they be negotiable in form, will take them with constructive notice of any want of power in the corporation to issue them, and can not enforce them when their issue was unauthorized." Cooley's Constitutional Limitations, 215.

And in a note many authorities are collected.

Having shown that it is settled law that where bonds are issued by a municipal corporation without power, without authority of law, they are void even in the hands of a *bona-fide* purchaser, the next step is to inquire if the case now under consideration falls within this principle.

PROPOSITION II.

A statute which authorizes township officers to issue bonds only when an election "may have already been held, and a *majority of the legal voters of the township* were in favor" thereof, does not authorize the issue of bonds when *less* than a "majority of the legal voters" were in favor thereof, although there were "a majority of all the legal voters *voting at such election.*"

If bonds are issued in such case they are issued without authority of law, and are void even in the hands of a *bona-fide* holder.

The Illinois Statute, approved February 28, 1867, which is relied upon as the authority for issuing the bonds now in controversy, confers power on incorporated townships in two classes of cases.

In one the power is given to be exercised *after* the question "has been submitted to the legal voters of the township," and when "it shall appear that a majority of all the legal voters of such township, *voting at such election*," have voted therefor, etc. Sects. 12, 13, 14.

But there is another class of cases in which no future vote is to be had, but in which townships are authorized to issue bonds only in cases "where elections may *have already been held* (without authority of law before the statute was passed), and (only in those cases when) *a majority of the legal voters of any township, were in favor of* a subscription," etc. Sects. 12, 13, 14.

It is important to notice the particular form and collocation of the statute.

An examination of Sections 12, 13 and 14 will show that they may be condensed into two classes thus:

"Any township may subscribe to the capital stock," etc. Sect. 12.

"No such subscription shall be made until the question has been submitted to the legal voters," etc. Petition to be presented and notices posted, etc. Sect. 13.

"If it shall appear that a majority of all the legal voters voting at *such* election have voted for subscription, it shall be the duty of the supervisor to subscribe Sect. 14. He shall then execute bonds."

This is one class.

Then there is excepted out of these provisions by a *proviso* to Section 13, a class of cases in which authority is given to make a subscription "where elections may have already been held, and a majority of the legal voters of the township were in favor of a subscription."

This class is *sui generis*.

The bonds now in controversy recite that they were issued under this statute, "and in accordance with the vote of the electors of said township, at the special election, held August 14, 1866, in accordance with said act."

This, of course, was *prior to the date of the act*, and the bonds now in controversy belong to the second class I have described.

On the trial to a jury in the Circuit Court of the United States for the Southern District of Illinois, at June term, 1871, the defendant below gave evidence tending to show that *no vote* was had as recited in the bonds, that no vote was had August 14, nor was there any evidence tending to show a vote on *that* day. There was evidence tending to show that a vote was had August 4, but if so, that "a majority of the legal voters of the township" did *not* vote in favor of a subscription, or the issue of bonds. Thereupon the Court charged the jury that:

"The election held in August, 1866, as detailed in the evidence, was validated by the act of February 28, 1867, so as to authorize the defendant to subscribe for stock in the Danville, Urbana, Bloomington and Pekin Railroad, and to issue the bonds in question, and when the stock was subscribed and the bonds issued, the bonds are binding on the defendant in the hands of a *bona-fide* holder."

As there was evidence tending to show that a *majority of those voting* voted in favor of bonds, this charge necessarily held, that *such vote* was sufficient.

This I deny, and insist that *a majority of all the legal voters of the township* was requisite, because:

1. The *language* of the *proviso* to Section 14, of the act of February 28, 1867, upon every principle of interpretation *clearly* so requires, and there is no room therefore for construction.

2. There is a *manifest reason* why the legislature would, in this class of cases, require a majority of all the voters, since the vote, when had, was unauthorized, and voters had no motive to attend and indicate their wishes.

3. The language employed as to elections *to be held* after the statute was passed, when contrasted with that as to *past elections*, clearly indicates that the legislature intended in one class, as the statute says, to require only "a majority of all the legal voters voting at such election," while in the other, as the statute declares, "a majority of (all) the legal voters of the township" is requisite.

I.

1. *The language of the statute.*

The statute, by its own clear words, gives power to issue bonds only "where elections may have already been held, and a *majority of the legal voters* of any township were in favor of a subscription," etc. Sect. 14.

Now, here the words employed are clear, unambiguous, unequivocal. The purpose in view could not be more explicitly stated. In such case there is no room for construction, and no doubt to solve by interpretation. The first of Vattel's forty-five maxims of interpretation is,

"That it is not permitted to interpret what has no need of interpretation. Where an act is conceived in clear and precise terms, when the sense is manifest, and leads to noth-

ing absurd, there can be no reason to refuse the sense which this treaty naturally presents. To go elsewhere in search of conjectures *in order to restrain or extinguish it* is to endeavor to elude it."

Potter's Dwarris on Stat. 126.

This rule is fully adopted in our Courts.

Jackson vs. Lewis. 17 Johns., 477.

Waterford & W. Turnpike Co. vs. People. 9 Barb., 170.

People vs. N. Y. Central R. R. Co. 13 N. Y., 80.

United States vs. Fisher. 2 Cranch, 358.

Potter's Dwarris, 143.

And Potter says:

"Statutes should be interpreted according to the most natural and obvious import of their language, without resorting to subtle or *forced construction for the purpose of either limiting or extending their operation.* Courts can not correct supposed errors, omissions, or excesses of the Legislature.

"The office of interpretation is to bring the sense *out* of the *words used*, and not to bring a sense into them."

Potter, 144. *Waller vs. Harris.* 20 Wend., 562.

McClusky vs. Cromwell. 11 New York, 602.

Lieber's Polit. Herm., 87.

Supervisor, etc., vs. People. 7 Hill, 513.

II.

2. *The reason for a difference.*

A satisfactory reason is apparent for requiring a majority of all voters in one case, and only a majority of those voting in another. The statute authorized a vote upon notice on the question of issuing bonds generally. In this case the voters all would have an opportunity to express their will. Those who would not vote might well be supposed to interpose no objection. Their silence would be their consent. These added to a majority of those voting would be an emphatic affirmative.

But the legislature must have looked upon a vote *previously held*, without any authority of law, in a very different light. Unless at such an election a *majority of all the voters* voted for the issue of bonds, there could not be said to be any expression of the public will. For as Chief Justice Lawrence said in *Marshall vs. Silliman*, in a similar case:

"The so-called vote was an idle form. Persons opposed to the subscription were under no necessity or obligation to vote against it, because they had a right to regard the entire proceeding as a nullity. The vote can no more be accepted as the action of the town, or as giving the consent of the town to the creation of this debt, than would a resolution adopted by the same number of persons at one of their dwellings, or at a casual encounter at a street corner." Supreme Court decision, January, 1872.

See *Marshall Co. vs. Cook.* 38 Illinois, 48.

III.

3. *A difference in phraseology applied to separate classes of cases, indicates a difference of purpose.*

There are cases where, if the meaning of any particular clause of a statute is under consideration, it may be proper to look into other parts of the statute, for it is said: "otherwise the different sections of the same statute might be so construed as to be repugnant." Smith on Stat., Sect. 649. "But," says Smith, "to warrant the application of this rule, the intention of the legislature, as collected from the whole act, must be clear and manifest." Sect. 649.

Now it certainly can not be said to be *clearly* the intention of the legislature to construe the *proviso* of Section 13 of the statute, by or in connec-

tion with any other provision. There is, in fact, no other provision by which it can be construed or qualified.

In the first place the statute provides for the issue of bonds generally by townships, upon the vote of a majority of the legal voters, "voting at such elections." It then, by a *proviso* to Section 13, makes another class of cases in which bonds may be issued, and this class is *excepted* out of the general rule.

In Potter's Dwarris it is said:

"A *proviso* is something engrafted upon a preceding enactment, and is legitimately used *for the purpose of taking special cases out of the general enactments, and providing specially for them.*" 118.

Minis vs. United States. 15 Peters, 423.

Wyman vs. Southard. 10 Wheat., 30.

Haydkafer vs. Burrus. 1 Wash. C. C. R., 119.

Then, in the next place, the legislature, evidently for the purpose of making a distinction in the two classes of cases, uses language explicitly requiring only a majority of the legal voters "*voting at such election*" in the one case, and as to the other, with equal distinctness, requiring "a majority of (all) the legal voters of any township."

The fact that a different expression is used as to each class of cases, very clearly indicates a different purpose as to each.

In *Bloom vs. Richards*, 2 Ohio State R., 403, the Supreme Court in considering a statute copied in part from a prior one, said:

"When a considerable change is made in the phraseology of a former law, the inference is reasonable that a change of meaning was also intended."

So here, when in different clauses of the same statute relating to two different classes of cases, it employs a different phraseology, it must be presumed to have been done designedly, and "the inference is reasonable that a change of meaning was also intended."

PROPOSITION III.

Where a legislative act confers authority on a municipal corporation to issue negotiable bonds, only in cases where a *past fact exists*, a false recital of the existence of such fact in bonds issued, neither estops the corporation from denying it, nor raises a presumption of its existence, even in favor of an innocent holder of such bonds, nor excuses him from the duty of ascertaining if such fact exists.

The false recital of *such* fact can not make applicable and operative a legislative act otherwise inapplicable and inoperative.

Falsehood is not legislative power, nor can it create power by reciting its existence.

The charge to the jury as made in the Court below goes much further than to assume that if a majority of those voting at an election voted in favor of bonds, then bonds issued would be valid in the hands of an innocent holder.

The charge was given on evidence tending to show that no vote was taken on the question of issuing the bonds now in controversy, and certainly none on the 14th of August, 1866, the date recited in the bonds. Yet the charge was that "The recitals in the bonds estop the defendant from denying the fact of a valid election as against a *bona-fide* holder of the bonds or coupons attached thereto."

The effect of this is that if a *minority* vote of all the electors of the township, or if *no vote at all* was had, bonds issued reciting a vote are valid in the hands of a *bona-fide* holder.

But this, as has been shown, can not be so, if the want of a vote, or the want of the requisite majority vote, *goes to the question of power to issue the bonds, as it does in this case.*

There can not be much difficulty in distinguishing between negotiable securities executed *ultra vires*, and those issued within the power of municipal corporations.

The cases on this subject fall within two classes: one class is where a power is given to a corporation *in præsenti*, but the power is to be exercised "on certain conditions," as it is said in *Knox Co.* vs. *Aspinwall*, 21 Howard 546, referring to 6 Ellis & Blackburn 327, or as it is elsewhere expressed, that there are "qualifications coupled with the grant of power," *Gelpeke* vs. *Dubuque*, 1 Wallace 203. There is a large class of such cases, but they relate to the question of the *regularity* of the exercise of power, and of votes taken, etc.

Here it has been held by some courts, and denied by others, that when bonds are issued reciting the proper vote, or even without the recital, but when a vote has in fact been had, that *bona fide* purchasers of bonds have a right to presume that the corporation has *regularly* complied with "the conditions," because this is a fact within their peculiar knowledge, and on grounds of justice the corporation is estopped from denying it, and upon the principle that they may not take advantage of their own wrong.

But in this class of cases "the conditions" to be performed are all *subsequent* to the grant of power—mere qualifications coupled with the grant, and none of them hold that where the power is by law made dependent on a vote of electors, and no vote, or only a minority vote, is had, that a recital in the bonds can supply the want of power to issue them.

But there is another class of cases where there is a total absence of any power to issue bonds by a municipal corporation. One of these is where a power is given only *when a past fact happens to exist*, as the foundation of the power. If there be no foundation on which the power can rest, it can not exist. Here there are no "certain conditions" which accompany the power to be performed. Here there are no "qualifications coupled *with* the grant of power," for no power has ever been granted, and none ever existed under "any circumstances" (1 Wallace 175), because as the power is only to be given in case a certain past fact exist the non-existence of the fact carries with it the non-existence of the power.

Now, in this class of cases, the fact on which the power depends is not "peculiarly within the knowledge of the corporation," and there can be no *estoppel*, and in such case there is no presumption that officers have *regularly* performed any duty, because it is not a question of official duty *to be performed*, but a question of the existence of a past fact, which, in the case now under consideration, was a voluntary, unofficial, unauthorized act. Such facts can be as readily ascertained by bond holders as by corporate authorities. There is no question in such case either as to the directory character of the provisions of the statute, for the essential fact on which the power depends for its existence is past, not *in futuro*, and is vital to the power itself.

The case now under consideration falls within this class.

There are well-considered cases which prove that the non-existence of the past fact on which the power depends, is fatal to bonds issued as in this case; and as the *reason* of the law is the life of the law, I may here say there is no case where bonds have been sustained by the courts, where the *reason* given for so doing is applicable to this case, or can be applied to sustain the bonds now in controversy. In this case *the non-existence of a record showing the proper vote is fatal to the bonds.*

Gould vs. Town of Stirling, 23 New York 458. It was held that where a town had issued negotiable bonds, which could only be issued *when the written assent of two-thirds of the resident persons taxed in the town had been obtained* and filed in the County Clerk's office. The bonds issued without such assent were invalid, and that the *purchaser of them could not rely upon the recital in the bonds that such assent had been obtained.*

The Court say:

"One who takes a negotiable promissory note or bill of exchange, purporting to be made by an agent, is bound to inquire as to the power of the agent. Where the agent is appointed and the power conferred, but the right to exercise the power has been made to depend upon the existence of facts, of which the agent may be supposed to be in an especial manner cognizant, the *bona-fide* holder is protected, because he is presumed to have taken the paper upon the faith of the representation as to those facts. The mere fact of executing the note or bill amounts in itself in such case to a representation by the agent to every person who may take the paper that the requisite fact exists.

"*But the holder has no such protection in regard to the existence of the power itself.* In that respect the subsequent *bona-fide* holder is in no better situation than the payee, except in so far as the latter would appear of necessity to have cognizance of facts which the other can not [must ?] be presumed to have known."

Cooley in his Constitutional Limitations in commenting on this and other cases says:

"The doctrine in the case of *Gould vs. Town of Stirling* appears to us to be sound, and that wherever a want of power exists a purchaser of the securities is chargeable with notice of it, *if the defect is disclosed by the corporate records*, or as in that case by other records where the power is required to be shown."

As to the bonds now in controversy, it can not be said that the officers issuing them were "in an especial manner cognizant" of the fact that an election "may have already been held," and that "a majority of the legal voters were in favor," etc. The statute of February 28, 1867, required "That where elections may have been held as aforesaid, it shall be the duty of the town clerks to file with the county clerks certificates of the votes," etc. It was the duty therefore of purchasers of bonds to look to the law and the recorded proceedings. And if none was found, as none could be in this case, that fact would be notice to all the world that no power existed to issue bonds. This duty is explicitly stated by *Mr. Justice Clifford* in *Bissell vs. City of Jeffersonville*, 24 Howard 298:

"Purchasers of such paper look at the form of the paper, the law which authorized it to be issued, *and the recorded proceedings on which it is based.*"

In *Bissell vs. Jeffersonville*, 24 Howard 299, Mr. Justice Clifford said:

"Duly certified copies of the record of the proceedings were exhibited to the plaintiff at the time they received the bonds, showing to a demonstration that further examination upon the subject would have been useless; for whether we look to the bonds or the *recorded proceedings* there is nothing to indicate any irregularity or even to create a suspicion that the bonds had not been issued pursuant to a lawful authority. The company and their assigns, *under the circumstances*, had a right to assume that they imported verity."

This language is quoted and approved in *Moran vs. Commissioners of Miami*, 2 Black 725. In *Commissioners of Knox* vs. *Aspinwall*, 21 Howard 543, the record of the proper officers was in evidence as the authority for issuing bonds. In *Marsh vs Fulton Co.*, 10 Wallace 683, Mr. Justice Field said an innocent holder of municipal bonds:

"Was bound to look to the action of the officers of the county and ascertain whether the law had been so far followed by them as to justify the issue of the bonds."

And upon these authorities it was the duty of purchasers of bonds now in controversy to *look to the record*; their omission to do so, or their purchase of the bonds when there was *no record*, is evidence of such gross negligence as to constitute *mala fides*.

1 Parsons on Notes and Bills, 259. 2 Ib., 279.

The bonds in controversy recite the act of February 28, 1867, and thus gave notice that a record of the vote was required, and put the purchasers on inquiry.

In *Hull vs. Marshall Co.*, 12 Iowa 142, it was held against a *bona-fide* holder that county bonds issued without authority conferred by a vote of the people under a law requiring a vote were void.

Clark vs. City of Des Moines, 19 Iowa 209.

This was an action upon city warrants negotiable in form of which the plaintiff claimed to be the *bona-fide* assignee without notice of defects. The city offered to show that the warrants were issued without any authority from the city council, and without any vote of the council authorizing the same. It was held that the evidence should have been admitted, and that it would constitute a complete defense. Here the existence of *past fact* was essential to the authority to issue bonds.

Baltimore vs. Eschbach, 18 Md. 276.

Johnson vs. Common Council, 16 Ind. 227.

Brady vs. Mayor of New York, 2 Bosw. 173. 20 N. Y. 312.

Swift vs. Williamsburg, 24 Barb. 427.

In this case there is no estoppel.

I have not yet seen the argument for the defendants in error, but in the argument of somewhat similar, but by no means analogous cases, great stress is laid on the *recitals* in bonds of compliance with *executory* provisions of the laws under which they were issued. But the cases show that the recitals have no effect, which would not exist without them, and that they can not supply a want of power to issue bonds whether occasioned by the absence of law or by a failure to take the steps which make the law operative.

The strongest language I have seen in regard to the effect of the issue of bonds is in *Gelpeke vs. Dubuque*, 1 Wallace 175. Mr. Justice Swayne says:

"When a corporation has power *under any circumstances* to issue negotiable securities, the *bona-fide* holder has a right to presume they were issued under the circumstances which give the requisite authority. If there were any *irregularity* in taking the votes of the electors, or otherwise in issuing the bonds, it is remedied by the curative provisions of the act of January 28, 1857."

In that case it certainly was not intended to hold that where a law requires a vote to be taken as a *prerequisite to the power to issue bonds*, that bonds issued without any vote, or a majority vote, would be valid. The "circumstances" alluded to were such as might have existed *by the action of the officers issuing the bonds*, not as in this case "circumstances" required by statute *prior to the action of the officers* issuing the bonds. See 11 Ohio St. 192, hereafter cited.

No such question was decided by Justice Swayne, and in that case even *irregularities* had been cured by a law, so that they were not in question. It will be hereafter shown that the courts in Illinois do not adopt the principle of this case; for in *Marshall Co. vs. Cook*, 38 Ills. 46, the Court say: "It is *not* sufficient that it appears that the officer had under *any circumstances* power to perform the act;" and the case decided by Mr. Justice Swayne can not, in any aspect of it, meet the question now made as to a power dependent on a *past fact*, a fact prior to the law prescribing the cases in which bonds may or may not be issued.

There is a wide difference between a statute *confessedly in force* in a township, and under which proper *future* "circumstances," dependent on official action in future, might be evidence of the regular exercise of power; and a statute *never in force* in a township, because the *prior* "circumstances," which alone could make it operative, never existed.

In such case no presumption or recital or falsehood can be sufficiently po-

tent to call into being the "circumstances," or create power dependent on legislative authority, where the legislature had not only never so ordained, but had expressly enacted otherwise, and that is precisely the case here.

In *Gould vs. Sterling*, 23 N. Y. 458, as we have seen, it was said that when an *authorized* agent executes bonds, "The mere fact of executing the note amounts in itself to a representation, * that the requisite fact exists." And such may be the rule in the *cases to which it properly applies*, and *in the States which adopt it*. But it has never been applied as to bonds, either with or without recitals, except as *evidence of the regularity of the exercise of a power conferred*, and never as evidence of the existence of a *prior fact* on which the power depends; never to supply a want of power. Where a power has been given to a municipal corporation to issue bonds, with a direction to take a vote on the question, the rule has in some cases been applied as evidence that the vote was *regularly* taken and the power *regularly* exercised but never to sustain bonds when no vote, or only a minority vote, had in such case been taken.

In *Evansville R. Co. vs. City of Evansville*, 15 Ind. 411, the city was authorized to issue bonds, provided that no bonds shall be issued "unless on the petition of two-thirds of the residents of said city." The Court held that "The Common Council would have *no power to subscribe at all* in the absence of the petition."

Sack vs. Maysville R. Co., 12 B. Monroe 1. Neither the recitals, nor the fact that bonds have been issued and passed to an innocent holder, can have any effect in giving the bonds validity in this case, because the authorities show:

1. That where there is a *defect of power* to issue them, there is no estoppel. 21 Howard 544. *Id.* 443, 5. 11 Ohio St. 192. *Concord Tp. vs. Miller*, 5 Ohio 182. Angel & Ames on Corp., 3d Ed., 285. "Where there is no legal power, an attempt to act can be followed by no legal consequences." *Ludlow vs. McBride*, 3 Ohio 259.

2. The statute did not give the officers issuing the bonds power to decide on and give evidence of the conditional fact that would authorize the issue of bonds, and the officers do not derive it from general principles. *Goshen Tp. vs. Shoemaker*, 12 Ohio St. 628. 11 Ohio St. 191. *Hopple vs. Brown Tp.*, 13 Ohio St. 322.

It certainly requires no argument to prove that the powers of corporations must be strictly construed, and those of their officers must clearly appear, or their acts are *ultra vires*. And it will hereafter be shown that the officers who issued the bonds in controversy were not "corporate authorities" at all and had no power in relation to bonds.

In *Williams vs. Payton*, 4 Wheat. 77, this Court decided that:

"In the case of a naked power, not coupled with an interest, *the law requires that every prerequisite to the exercise of that power* should precede it. The party who sets up a title must furnish the evidence necessary to support it. If the validity of a deed depends on an act in pais, the party claiming under it is as much bound *to prove the performance of the act* as he would be bound to prove any matter of record on which the validity of the deed might depend."

It is a general rule that where a power depends on the existence of a matter *in pais*, it must be proved, and when it depends on evidence which the law requires to be of record, it must be proved by the record. *Kemper vs. McClelland*, 19 Ohio 321-2, and cases cited.

There can be no estoppel or presumption in favor of the validity of bonds when the law, as in this case, requires *record evidence* of a vote, and none exists. There can be no estoppel, when, as in this case, a party has failed "to pursue the investigation of truth, *by all convenient and expedient methods*." Herman's Law of Estoppel, Sec. 322.

It certainly can not be said that it is more important to protect titles to municipal bonds than it is to protect titles to lands.

I know it has been said in certain courts that judges have been "*reluctant*" to decide against the validity of bonds. It is respectfully submitted that courts should never be reluctant to declare the law as it is, and to apply general principles in a mode only to give equal sanctity to every species of property. Tax-payers have rights as well as the holders of municipal bonds. It would be judicial confiscation to take their property to pay bonds issued in defiance of all law.

Estoppels in law are not favored, and courts will not apply them unless on principle compelled to do so, since as a general rule, no one ought to be denied the privilege of "*setting up the truth.*" 1 Greenl. Ev., Sec. 22.

"Estoppels must be certain to every intent; for no one shall be denied setting up the truth, unless it is in plain and clear contradiction to his former allegations and acts." 1 Greenl. Ev., Sec. 22.

And a municipal corporation can not be estopped, unless by officers clearly authorized. Corporate powers are to be strictly construed, and the powers of corporate officers must also clearly appear. In this case there is no such power.

3. There is no question of acquiescence by any authorized power in this case. Even this could not "bind the township in its corporate capacity, if the claim alleged be in its inception illegal—if there be a defect of power." *Goshen Tp. vs Shoemaker*, 12 Ohio St. 628.

Where the power to issue bonds is dependent on a past fact, its non-existence defeats the power.

I call especial attention to *Hopple vs. Brown, Tp.*, 13 Ohio St. 322. The statute authorized townships on a vote of the electors to issue bonds if the County Commissioners should not be authorized to do so. The Commissioners were so authorized, and the township on a vote also issued bonds, and these bonds were held void in the hands of a *bona-fide* holder. Here the existence of a *past fact* defeated the power, and the act of the municipal officers in issuing bonds was not deemed evidence of the conditional fact on which the power depended.

The same was held in *Beckel vs. Union Tp.*, 15 Ohio St. 441. In *Aurora vs. West*, 22 Ind. 97, where a city was authorized to issue bonds on two conditions: a vote of electors, and that a road should be first located to Aurora. The Court while intimating that under the phraseology of the statute, "a determination of the City Council that such a vote had been taken would *probably* be sufficient evidence of that fact, at least to constitute a *prima facie bona-fide* purchaser in a given case;" yet as to the *past fact* of the *location of a road*, their determination in favor of its existence by the issue of bonds was not even *prima facia* evidence of it. And the Court held that "mercantile paper made void *ab initio* by statute is void in the hands of a *bona-fide* holder."

The Commissioners of Knox Co. vs. Aspinwall, 21 Howard 539. In this case county bonds were authorized upon a condition prescribed in the law authorizing their issue that the assent of a majority of the legal voters of the county should be had after notice duly published of the time of voting. It was objected that notices were not given according to the requirements of the law, but it was claimed in reply that the recitals in the bonds estopped the county from urging this irregularity. The case only decides that the recital is conclusive as to the *regularity* of the *exercise* of the power, but it does not hold that it establishes the *existence* of the power.

Mr. Justice Nelson:

"The ground upon which the want of authority to execute the bonds is placed is the alleged omission to comply with the requisition of the statute of 1849 in respect to the notices to be given of the election.* The act in pursuance of which the bonds were issued is a public statute, and any person dealing in them is chargeable with a knowledge of it; *and as this board was acting under a delegated authority, he must show that the authority has been properly conferred.* Full power is conferred upon the board [by the statute] to issue the bonds when a majority of the voters have determined in favor of the subscription, after due notice of the time and place of the election. The case assumes that the requisite notices were not given.* *This view would seem to be decisive against the authority*, on the part of the board to issue the bonds, were it not for a question that underlies it; and that is, who is to determine whether or not the election has been properly held? The question belonged to this board."

That was decided on the particular terms of *that statute.*

This case was decided mainly on the authority of *Royal British Bank vs. Turquand*, 6 Ell. and Bl. 327, in which case it is said that parties dealing with joint stock companies "are bound to read the statute and the deed of settlement.* Finding that the authority might be made complete by a resolution, he would *have a right to infer the fact of a resolution.*"

But Gholson J., in *Treadwell vs. Comm'rs*, 11 Ohio St: 192, in alluding to this case, very forcibly said:

"If the authority could not have been made complete *by any action of the company* with which the party was dealing, but *depended on a condition required by the statute*, the decision would have been different."

Now to apply that principle here. The authority to issue bonds depended on the fact of a prior vote. No "action of *the officers issuing the bonds*" could either have made that fact to exist or give conclusive evidence of it. The power to issue bonds "depended on a condition required by the statute," and as the condition did not exist, the power could not exist.

In *Pearce vs. Madison and Ind. R. Co.*, 21 Howard 441, a want of power on the part of a corporation was held to render invalid the notes which it had issued, and it was said that:

"Persons dealing with the managers of a corporation *must take notice of the limitations imposed upon their authority* by the act of incorporation." P. 443.

A corporation when acting under a special power must act strictly *on the conditions* under which it is given. *Queen vs. Ellis*, 6 Q. B. 516. *Striker vs. Kelly*, 7 Hill 25. *Aurora vs. West*, 22 Ind. 89. *Evansville R. Co. vs. City*, 15 Ind. 411.

Bissell vs. Jeffersonville, 24 Howard 288–299, presents a similar question to that in *Commissioners of Knox. vs. Aspinwall*, 21 Howard 539. The Court held that the Common Council of the city "were made by the laws the tribunal to decide" if the requisite petition of three-fourths of the voters had been presented.

Moran vs. Commissioners of Miami Co., 2 Black 722, presents only questions of the *regularity* of the exercise of power. And so of *Meyer vs. Muscatine*, 1 Wallace 393, and *Mercer Co. vs. Hacket, Ib.* 83.

Here was merely the usual presumption of official duty performed, in a case where the *law* gave the board *power* to judge and *make evidence* of the fact in the bonds issued, and where the power to issue bonds on such decision was distinctly given. But none of these reasons apply in this case. The question whether a prior majority vote had been taken could not rest on any presumption of official duty performed, for none had been taken by authorized officers, nor did the law give the officers *who issued the bonds* any power to decide the fact, for a record was required, and no officer could give effect to the law in a township where the requisite fact of a vote did not exist.

Many authorities might be cited to show that whatever presumptions arise in favor of the mere *regularity* of the proceedings of officers who are

especially authorized to furnish evidence of the facts which authorize them to act, yet these cases do not apply to a case like this, where the power to act is dependent on a *past fact*. It may indeed be competent for the law making power to *authorize officers to determine a fact*, and on that *determination* to issue bonds; and cases have been cited.

But such cases do not prove that where officers issue bonds, as in this case, without any such express authority that they can decide or determine the existence of prior facts, which were, at the time of their performance, unauthorized. And certainly, where, as in this case, the law requires a record, it is conclusive evidence that, in the absence of the record and in the absence of the fact without which the law gives no power to issue bonds, no recital can create the power.

In *Meyer vs. Muscatine*, 1 Wallace 385, the presumption of the regularity of official acts was *limited* to officers "empowered to act *and acting under the*" law.

The Court says:

"A party taking the bonds *was bound to look to the legal authority* under which the public agents acted. If that were sufficiently comprehensive he had a right to presume that *those empowered to act* and *acting under it* had complied with its requirements."

But whatever may be the general rule as to the effect of recitals, in Illinois the jurisprudence of which State is now to be ascertained and followed, no rule of estoppel by reason of recitals in bonds applies to relieve the holder from the necessity of ascertaining if the requisite vote has been had to authorize them, and certainly not under such statute as that involved here. And in this case the bonds now in controversy are void, because no legislative power ever authorized their issue.

This must be so not only on authority, but on principle.

By the Constitution of Illinois the legislative authority of the State is "vested in a General Assembly."

In the exercise of this authority the General Assembly, by the act of February 28, 1867, prescribed the cases in which bonds might be issued, one of which was by those townships "where elections may have already been held, and a majority of the legal voters were in favor," etc.

Upon the maxim, *expressio unius exclusio alterius*, this excludes the power to issue bonds by any but the townships in which the requisite vote had been taken.

But the law did not leave the power alone to the operation of this maxim. It expressly declared that "no such subscription shall be made until the question has been submitted to the legal voters," etc.

It must be conceded that none but the legislative authority can give the power to municipal corporations to issue bonds.

Now if bonds are issued by any township where no vote has been taken, or in which the requisite majority vote has not been had, they must be issued in such case by a township to which the law did not apply—one over or in which it never was in force by any consent of the General Assembly. And if in a bond issued the false recital of the fact that the proper vote was had in a given township shall be deemed conclusive or even *prima facie* evidence that it was so, then the statute is, as to such township, made to operate as in force, though the General Assembly never so intended or declared. And if this can be done, the legislative authority, which alone could confer the power to issue bonds, is *not* "vested in the General Assembly," but is derived from a potential falsehood!

Suppose the statute had declared that any township which, according to the national census of 1860, had a population of 500 might issue bonds,

could a township, having by the census a population of only 100, issue valid bonds by falsely reciting in them that the township had the requisite population? Or suppose the statute had authorized bonds to be issued only by townships through which a railroad had been constructed, could a township through which no railroad had been constructed issue bonds and give them validity by a false recital therein of the existence of the requisite railroad? Manifestly not; for, if so, a falsehood would have the omnipotent effect of legislative authority, and make a statute operative where the legislature had declared it should not be.

This question was decided in *Treadwell vs. Hancock Co.*, 11 Ohio St. 183, even against a *bona-fide* holder of bonds, and yet this Court is gravely asked, on behalf of the defendant in error, to hold that the statute of February 28, 1867, was and is in force in and applicable to St. Joseph Township, although the legislature has declared it should not, because the "circumstances" never existed under or by virtue of which the statute could become in force in or applicable to that township.

Suppose the legislature had declared that "in townships where a majority of the electors have voted in favor of the issue of bonds, and where a record has been filed of the fact, the clerk may issue bonds; but it shall not be lawful to issue them unless such vote has been taken and record filed"

Can it be doubted that bonds issued by a township in which no vote had been taken would be void for want of power to issue them? Yet that is precisely the effect of the statute we are considering.

PROPOSITION IV.

Under the Illinois Constitution, of 1848, a corporate township could not be made liable on bonds issued *only* by the township supervisor and clerk, in favor of a railroad company in payment of a subscription by such officers, made in the name of the township, to the capital stock of such company, without the consent of a majority of the qualified voters of such township, given in favor of such subscription and issue of bonds, after the enactment of a law authorizing them.

And as all persons are bound to know the law, and the authority of officers, such bonds are void in the hands of an innocent purchaser.

The 5th Section of the 9th Article of the Constitution of Illinois, of 1848, provides that:

"The *corporate authorities* of counties, townships, school districts, cities, towns and villages, may be vested with power to assess and collect taxes *for corporate purposes;* such tax to be uniform in respect to persons and property within the jurisdiction of the body imposing the same."

In *Howard vs. St Clair & M. L. & D. Co.*, it was held that this section

"Was to be construed as a limitation upon the power of the legislature to delegate the right of corporate or local taxation to any other than the *corporate or local authorities*, and that by the phrase 'corporate authorities' must be understood *those municipal officers who are either directly elected* by the people to be taxed, or appointed in some mode to which they have given their assent." *People Ex. Rel. vs. Mayor, etc.* 51 Illinois, 30.

By the township organization law, in force in St. Joseph Township, the "corporate authorities," or municipal officers "elected by the people," were, when the vote was had and bonds issued in this case, "one supervisor, one town clerk, one assessor, one collector," etc. Act of February 20, 1861, Gross Laws, 744.

There can, therefore, be no township taxation unless by act of all, or a majority of all these officers in joint meeting, or by vote of the electors.

In the *People vs. Mayor, etc.*, 51 Illinois, 31, it was held that municipal bonds "for any improvement," for the payment of which a "resort must

be had to taxation," as in this case, could not be issued by any local authority, except the *municipal officers*, or by a vote of the electors.

In that case it appears that an act of the legislature created a board of commissioners to buy land and improve a public park. For this purpose the mayor, comptroller, and clerk of the City of Chicago, were required to issue bonds, and the board of commissioners were authorized to use or sell them. The syllabus of the case says:

"The act confers no express power upon the park commissioners to levy and collect taxes for the payment of the bonds, *but it is equivalent thereto*, as resort must be had to taxation for their payment, and it seems it would be difficult to sustain that portion of the act, on the mere question of the exercise of the taxing power, the park commissioners not being a corporate authority of the City, and to no other authority than such *corporate authority* can the legislature delegate the power to impose corporate taxation under Section 5, of Article 9, of our Constitution."

The Court says:

"We do not think it is within the constitutional competency of the legislature to delegate this power to these commissioners. If this power is possessed, then it must be conceded that the property of every citizen within it, is held at the will and pleasure of the legislature."

The Court then refers to Section 37, Article 3, of the Constitution, by which the State is prohibited from creating a debt exceeding fifty thousand dollars without the consent of the people, manifested by a vote, and after considering it, say:

"We do not, of course, intend to be understood by this reasoning, as asserting that the legislature can not authorize the proper *corporate authorities* of a municipality to issue its bonds for corporate purpose for more than fifty thousand dollars, even without a vote of the people. What we do say is that an attempt by the legislature to compel a municipality to do this without either a popular vote, or the assent of its duly elected *corporate authorities* is not in harmony with the spirit of this provision of the constitution."

But the whole question is set at rest by the decision of the Supreme Court of Illinois, made January, 1872, in *Marshall vs Silliman*.

The Illinois statute of March 5, 1867, incorporated the Dixon, Peoria and Hannibal Railroad Co., and authorized townships, upon a vote of the electors, to subscribe stock therein, and issue bonds not exceeding thirty-five thousand dollars for a township; the bonds to be issued by the supervisor and clerk of the township.

In Bromfield Township the requisite vote was had, but the electors also voted on a separate proposition without law, to subscribe stock and issue bonds for fifteen thousand dollars additional.

On the 17th of April, 1869, the legislature passed a curative act, legalizing the vote.

On the 5th of May, 1869, bonds were issued by the supervisor and clerk, and a bill was filed by tax-payers to enjoin the Railroad Co. from negotiating the bonds. It was held that the supervisor and clerk were not the "corporate authorities," and could not, without a vote of the electors taken after the law was passed, issue bonds, and that the curative statute was void.

LAWRENCE, C. J., said:

"It is said that the legislature might have authorized the town supervisor and town clerk, as corporate authorities of the town, to subscribe to the stock of this road, and issue township bonds therefor without a vote of the people, and that the curative act is to be considered as giving them that power which they have duly exercised. The case of the town of *Keithsburg vs. Frick*, 34 Illinois, 420, is cited is support of this position. It is said in that case that the legislature might grant that power to the trustees of a town, * without taking a vote of the people. We do not dissent from that position, but it does not aid the appellee in the present case. The town *supervisor and clerk who issued these bonds do not represent a township* as the board of trustees represent an incorporated town or the common council represent a city. The supervisor and clerk are but *a part of the corporate authorities*. They have no power of taxation, nor power of themselves to bind the city in any way.

"The case of *Livingston vs. Wilder*, 53 Illinois, 302, may again be cited. We said there that the police commissioners were not the corporate authorities of East St. Louis, as they had not been elected by the city, nor appointed in any manner to which the people had given their consent, and therefore the legislature could not give the power of taxation *by creating a debt* binding upon the city.

"*So of the supervisor and clerk*, though elected by the people, they were not elected for the purpose of creating a debt or imposing a tax, and *the legislature could not clothe these two officers without the consent of the people with a discretionary power of taxation, or of creating a debt* because there are *not by themselves the corporate authorities* in the sense of the constitution."

Then referring to the case of *Cowpill vs. Long*, 15 Illinois, 202, and to the curative act before referred to, Lawrence, C. J., says:

"The question before the Court (in 15 Illinois) was very different from the ratification of a void tax by retrospective legislation, which the legislature could not of its own power impose prospectively.

"Our conclusion is that the so-called curative act was a violation of the constitution. Its object was to compel this town to issue its bonds for railroad stock, independently of its own wishes, and this was beyond the limits of legislative power."

These authorities cover the whole question involved in this case.

The curative act of February 25, 1869, is unconstitutional.

So far as the act of February 28, 1867, relates to a vote previously taken, it is simply the same in principle, and is unconstitutional. It is an attempt to create a debt by officers who are *not* the "corporate authorities," and without a vote of the people *under the law*, and this is precisely what the Supreme Court of Illinois says the legislature can not constitutionally authorize to be done.

This question goes not to the *regularity* of the exercise of any power, not to the *qualifications* of any power, not to the presumption in favor of official duty performed under any power, but to the very fountain and source of the power itself.

Under the Constitution of Illinois, bonds can not be issued except in pursuance of a *previous law*, and where the consent of voters is relied upon as evidence of the consent of corporate authorities, their vote must be given in pursuance of previous law.

The Constitution, Article 9, Section 5, declares that "the General Assembly shall require that all the property within the limits of municipal corporations belonging to individuals, shall be taxed for the payment of debts *contracted under authority of law*."

This is equivalent to a declaration that debts may not be contracted in any mode other than in pursuance of previous law.

See *United States vs. Grosmeyer*. 9 Wallace, 92.
Lower vs. Wollick. 25 Indiana, 68.
Holmes vs. State. 2 Iowa, 501.
Thomas vs. Owens. 4 Maryland, 189.
Matter of Dorsey. 7 Port., 293.
Dash vs. Van Fleck. 7 Johns., 498.
Cooley on Const. Lim. 397.
2 Parson's Cont., 674.

PROPOSITION V.

Whatever may be the rule under the peculiar form of statutes in other States, in Illinois when a majority vote of voters is by law made a prerequisite to the issue of municipal bonds, if the requisite vote be not had, bonds issued without it are void in the hands of innocent holders.

This is especially so when the statute *prohibits* the issue of bonds without the authorized prerequisite vote.

The Illinois rules will be adopted by the Supreme Court of the United States, as to bonds issued under a statute of that State.

The first and principal part of this proposition is settled by a decision of the Supreme Court of Illinois, under the act of November 6, 1849. (Scates' Comp., 950. Gross' Stat., 552.) This act provides that whenever the citizens of any city or county are desirous that the city or county should subscribe for stock in any railroad company, they are authorized to do so. Sect. 1.

For the payment of the stock the judges of the County Court, or Council of the City, are authorized to borrow money and issue bonds. Sec. 2.

No subscription shall be made or bond issued unless a majority of the electors vote for the same. The judges of the County Court shall give notice requiring the electors to vote. Sect. 4.

In counties acting under the "township organization law," the Board of Supervisors are required to perform the duties of the judges of the County Courts. (Scates' Comp, 337. Gross' Laws, 757.)

In Marshall County, while acting under the township organization law, on the 28th of February, 1853, the County Court ordered an election which resulted in favor of subscribing to the capital stock of a railroad company, and in pursuance of this, the Board of Supervisors issued bonds which passed into the hands of innocent holders, who sued to recover. The defense was that as the election was ordered by the County Court when it should have been by the Board of Supervisors, the bonds, though issued by the proper officers, were void and so the Court held.

The Court in *Marshall County vs. Cook*, 38 Illinois, 46, decided, April term, 1865, say:

"These bonds were issued without such an election as the law contemplates. Nor can an election, ordered and held without the authority of law, be held to answer the requirements of the statute. This is a question of authority and its legal exercise.

"Political corporations, in their organization and purposes, are essentially different from private corporations. The former are created to aid in the government of the people, the later to promote trade, manufactures, and a variety of other interests. They are usually endowed with all the powers and rights of an individual, so far as they can be conferred. And the power to contract debts and issue evidences of the same is an incident usually attending their creation.

"Municipal corporations however, being created for purposes of government, have always been held to act strictly within their charter. Their power is only co-extensive with the power granted. Without an express grant of power for the purpose, they have no authority to contract debts.

"Another broad distinction exists between the two classes of corporations. The business and proceedings of a private corporation are not public whilst those of municipal corporations are open to the examination of the public. All their proceedings are enrolled and become a matter of public record open to the inspection of all persons.

"That such a body may create a debt binding upon it, there can be no question, simply *by complying with substantial requirements of their charter*, nor will slight or immaterial deviations from the *mode prescribed* invalidate such securities in the hands of innocent holders for a valuable consideration. Such was the rule announced in *Johnson vs. Stark County*, 24 Illinois, 75; *Prettyman vs. Tazwell County*, 19 Illinois, 406.

"But on the other hand if the body assuming to act has no legal authority to create the debt, or if they exceed their authority, *or omit some essential prerequisite, the bonds are a nullity. Schuyler County vs. the People*, 25 Illinois, 181; *Supervisor of Hancock vs. Clark*, 27 Illinois, 305.

"And it is upon the principle that there is a wide difference between an act performed *without authority*, or *in violation* of law, and an act *defectively performed* under authority. In the former case the act is absolutely void, whilst in the latter it may become binding by ratification, or mere acquiescence.

"Where a person purchases property at a sheriff's sale, to render his purchase availing he must show that there was a valid judgment, and an execution.

"It is not sufficient that it appears that the officer had, *under any circumstances*,

power to perform the act, but it must appear that he possessed the *power in the case in which he performed the act.*

"It would therefore appear that the county agents only acquire jurisdiction or power to act *in the mode prescribed by law.* And the law has not only required *that an election shall be held*, resulting in favor of the issuing of bonds *to confer the power*, but has *expressly prohibited* them from acting in the absence of such authority. The Board of Supervisors were alone authorized to call the election.

"Whatever may be held *in other States* under *statutes differing, no doubt*, in some particulars from ours, we feel compelled to hold that an election, ordered and held by the body or tribunal authorized by the statute, is *essential to the exercise of the power.*

"It might be different if the legislature had not *prohibited* such bonds from being issued until the tribunal had called an election which had resulted in favor of issuing such bonds."

The Court then considered the case of *Gelpcke vs. Dubuque*, 1 Wallace, 175, and quote what Mr. Justice Swayne says:

"When a corporation has the power under *any circumstances*, to issue negotiable securities, the *bona-fide* holder has a right to presume they were issued under the circumstances which gave the requisite authority, and they are no more liable to be impeached for any infirmity in the hands of such holder, than any other commercial paper. If there were any irregularity in taking the votes of the electors, or otherwise, in issuing the bonds, it is remedied by the curative provisions of the act of January 28, 1857."

And in referring to this case, the Supreme Court of Illinois says:

"The Court, however, do not intimate that such instruments issued without power would be protected. The Court proceed upon the ground that the persons issuing the bonds did so in the exercise of a power; and that if there was a defective exercise of the power, the irregularity had been cured by the act of the legislature.

"There is no intimation that bonds void in their inception, *issued in direct violation of law*, would be protected."

See *Bradley vs. Ballard*. 55 Illinois, 420.
Prettyman vs. Supervisors of Tazwell. 19 Illinois, 415.
Fulton County vs. Miss. & W. R. R. 21 Illinois, 338.
People vs. Tazwell County. 22 Illinois, 147.
Supervisors vs. the People. 25 Illinois, 181.
President, etc., vs. McConnell. 12 Illinois, 138.
Fitch vs. Pinkard. 4 Scam., (Illinois) 78.
Town of Petersburg vs. Mappin. 14 Illinois, 193.
City of Pekin vs. Reynolds. 31 Illinois, 529.
Lasuell vs. Hikox. 4 Scam., (Illinois) 181.

There are cases where a power to issue bonds is given, and the peculiar phraseology of the statute may make their issue conclusive evidence that all requisite preliminary steps have been complied with, as in 21 Howard, 539; 24 Howard, 288; 2 Black, 722; 1 Wallace, 393; *Treadwell vs. Comm'rs*, 11 Ohio St., 186; or where the duty to comply with preliminaries may be only *directory*, or where the statute gives the power *in præsenti* regardless of the question whether preliminaries are performed, but all this is subject to legislative control. *The legislature may prohibit, and in this case have prohibited, the issue of bonds*, unless the prerequisite vote has been had.

And it has already been shown that unless officers are by statute authorized to decide on and give conclusive evidence of the *conditional fact* that would authorize the issue of bonds, there can be no *estoppel* on the right to deny the power.

In *Evansville R. Co. vs. the City*, 15 Indiana, 411, the city was authorized to issue bonds *provided that no bonds shall be issued* "unless it be on the petition of two-thirds of the residents of the city."

Under this *prohibitory proviso* it was held that the absence of the petition went to the question of power, that "the Common Council would have *no power at all* in the absence of the petition."

McGregor vs. D. & D. R. Co. 16 L. & E. 180.

And in *Pearce vs. M. & I. R. Co.*, 21 Howard, the Supreme Court says: "Persons dealing with the managers of a corporation *must take notice of the limitations* imposed upon their authority."

The act of February 28, 1867, now under consideration contains an *express prohibition* against the issue of bonds unless the requisite vote has been had. Its language is:

"No such subscription shall be made until the question has been submitted to the legal voters," etc.

And this prohibition applies to both classes of bonds authorized to be issued.

The rule that negotiable securities, issued in violation of law, are void is so inflexible that in *Bailey vs. Tabor*, 5 Massachusetts, 285, it was held that a certain class of bank notes were void in the hands of an innocent holder, because issued in violation of law, though they had been antedated so as apparently to have been issued before the prohibitory law was passed.

And the sufficient reason assigned is, that:

"To authorize a holder to maintain a suit and recover judgment on notes of this description, when the legislature has declared them void, would be effectual to annul an act of the wisdom and policy of which the legislature alone had a right to judge."

So here the bonds sued on can not be held valid without directly annulling the statute which declares that no bonds shall be issued, unless a majority of all the voters of the township vote for their issue.

In *Aurora vs. West*, 22 Indiana, 89, it was held that "mercantile paper made void, *ab initio*, by statute is void in the hands of a *bona-fide* holder."

It was so well understood that a failure to comply with the statute was *fatal to the power to issue bonds*, that the act of February 25, 1869, attempted to *validate* bonds issued without certain prerequisites, this legislative interpretation is of some value in ascertaining what the rule is in such cases in Illinois.

And the Supreme Court of the United States has authoritatively settled this question on a statute similar to that under which the bonds now in controversy were issued.

The effect of the clause *prohibiting* the issue of bonds without a vote is carefully considered.

Marsh vs. the Board of Supervisors of Fulton County. 10 Wallace, 676.

In February, 1853, the legislature of Illinois incorporated a railroad campany.

At that time the act of 1849 was in force, authorizing counties upon a vote of the electors to subscribe to the capital stock of any company, and to issue bonds. A notice of the vote was required specifying the company in which stock was to be subscribed.

The vote was had in Fulton County, and proper order made to subscribe to the designated company. After this the road was, by act of February, 1857, divided into three divisions, and a new company created for each division.

The subscription was then made and bonds issued to one of these companies.

The bonds passed into the hands of *bona-fide* holders, but they were held void.

Mr. Justice Field, with masterly and unanswerable logic, referring to the bonds, said:

"Were they valid when issued? The answer depends upon the law then in force. That law authorized any county to subscribe stock, and to pay in bonds *provided* such subscription was previously sanctioned by a majority of the qualified voters of the

county at an election, and *it prohibited any subscription or the issue of any bonds*, without such previous sanction. 'No subscription shall be made, or bond issued by any county,' says the law, 'unless a majority of the qualified voters of each county shall vote for the same.' And the law further requires that the notices calling for the election 'shall specify the company in which the stock is proposed to be subscribed.'

"These provisions furnish the answer to the first question presented."

Mr. Justice Field then holds that the bonds were void for two reasons: first, because the company to which the subscription was made, and bonds issued, "was a different corporation from the original company," and, secondly, because no vote was had in favor of this company, and under *this* law *a vote* was *prerequisite to the power to issue bonds*, valid even in the hands of an innocent purchaser. He says:

"But it is earnestly contended that the plaintiff was an innocent purchaser. If such were the fact we do not perceive how it could affect the liability of the County of Fulton. This is not a case where the party executing the instruments possessed a general capacity to contract, and where the instruments might for such reason be taken without special inquiry into their validity. It is a case where the power to contract never existed—where the instruments might with equal authority have been issued by any other citizen of the county. *It is a case, too, where the holder was bound to look to the action of the officers of the county and ascertain whether the law had been so far followed by them as to justify the issue of the bonds.* The authority to contract must exist before any protection as an innocent purchaser can be claimed by the holder. This is the law even as respects commercial paper alleged to have been issued under a delegated authority, and is stated in the case of *Floyd Acceptances*, 7 Wallace 676."

Bonds issued without the requisite vote are void.

Hull vs. Marshall County. 12 Iowa, 142.

Casaday vs. Woodbury County. 13 Iowa, 113.

Iowa Ex. Rel. Brooks vs. Napier County. Judge 7, Iowa 425.

Pearce vs. Madison, and Ind. R. 21 Howard, 443.

Recitals do not estop from making defense.

Treadwell vs. Commissioners. 11 Ohio St. 190.

Hopple vs. Brown Township. 13 Ohio St. 330.

Beckle vs. Union Township 15 Ohio St. 438.

Aurora vs. West. 22 Indiana, 88.

St Louis vs. Alexander. 23 Missouri, 483.

Starin vs Genoa. 23 New York, 430.

Smead vs. Indianapolis & Co. 11 Indiana, 104.

Municipal bonds were sustained in *Commissioners of Knox vs. Aspinwall.* 21 Howard, 542, *Bissell vs. City of Jeffersonville.* 24 Howard, 288, and in other cases.

But in none of these cases was there in the law under which the bonds were issued any *express prohibition* of the issue of bonds, as there is in this case now under consideration.

This Court will adopt in this case the rules of law adopted by the Courts of Illinois in similar cases. On this subject I will refer to the briefs in the case of *Olcott vs. County Board of Supervisors of Fond du Lac Co.*, now pending in this Court.

PROPOSITION VI.

A statute which attempts to create a municipal debt where none existed before, as by attempting to validate void bonds, is unconstitutional and void.

A statute which authorizes bonds to be issued to a specified corporation, gives no authority to issue bonds to a different corporation.

This principle, and the application of it to this case, are perhaps sufficiently shown in what has already been said.

The curative act of February 25, 1869, in fact can not be construed as

applicable to the bonds now in controversy. Its preamble relates more especially to the omission to "keep a full and perfect record of electors," and "to file with the County Clerk certificates as required by Section 15 of" the act of February 28, 1867. It enacts that if *such* informality and neglect may have occurred they shall not invalidate bonds. But if it can apply to the *proviso* of Section 15 of the act of 1867, and the duty of Town Clerks to file certificates of votes had prior to the act, so far as it attempts to give validity to what was invalid before, it is an attempt by legislative act to create a debt. In view of the authorities cited, the bare statement of this proposition is enough.

This point was expressly decided by the Supreme Court of Illinois, January, 1872, in *Marshall vs. Silliman*. And see *McDaniel vs. Correll*, 19 Ill. 228. 11 *Ib.* 54. 14 *Ib.* 223. 15 *Ib* 125–481. 35 *Ib.* 363. 37 *Ib.* 88. 48 *Ib.* 212 Cooley's Constitutional Limitations. 382. And, besides, when the alleged vote of August, 1866, was taken the Danville, Bloomington and Pekin Railroad Corporation *was no in existence*. The *proviso* of the 13th Section of the act of February 28, 1867, only authorized bonds "where elections may have already been held and a majority of the legal voters of any township were in favor of a subscription *to said railroad*." This of course means the railroad *company*, since a *road* can not receive a subscription. The vote taken could not have been in favor of the issue of bonds "*to said railroad;*" for neither it nor the corporation authorized to build it were then in existence. This fact brings this case within the principle decided in *Marshall vs. Silliman*.

If the statute has attempted to validate a vote in favor of a corporation which had no existence—has attempted to provide for a case which could not exist—it can have no effect. And it has been decided by this Court that an authority to issue bonds to *one* corporation could not be employed to sustain bonds issued to another corporation, even in the hands of a *bona-fide* holder. *Smith vs. Milwaukee & S. R.*, 9. American Law Register, 655. *Fulton Co. vs. Miss. & W. R. R. Co.*, 21 Ill. 338. *Marsh vs. Fulton Co.*, 10 Wallace 676.

PROPOSITION VII.

Bonds issued by municipal authorities reciting a vote on the 14th of August, can not be sustained on a vote taken on the 4th of August, when the law under which they are issued requires a vote of electors to authorize their issue.

The bonds in controversy each contain this clause:

"This bond is issued under and by virtue of a law of the State of Illinois, entitled: 'an act.' etc., approved February 28, 1867, and in accordance with the vote of the electors of said township at the special election held August 14, 1866, in accordance with said act."

There is evidence produced on the trial in the Circuit Court tending to show that such vote was had August 4th, but no evidence tending to show there was any vote August 14th. There was no vote August 14th.

On this the judge charged the jury that the recital in the bond estopped the defendant from denying the fact of a valid election, and that the election held as detailed in the evidence was validated by the act of February 28, 1867.

Now if the vote taken August 4th authorized any bonds to be issued, it is fair to presume they were issued. On that hypothesis the power existed and could be used to issue bonds reciting a vote of that date. Nothing in the record shows bonds were not so issued.

If the bonds now in controversy are also sustained, bonds in double

the amount authorized by law will be sustained, and that simply means that legislative power will be held to exist without the consent of the legislature and against the positive letter and purpose of the statute.

This is no case for the application of the maxim: "*falsa demonstratio non nocet, cum de corpore constat.*" Under this maxim where there is "an erroneous description of a person or thing in a written instrument as soon as there is an adequate and sufficient definition, with convenient certainty of what is in end d,* any subsequent erroneous addition will not vitiate it."

If there had been in the bonds two or more expressions each indicating a specified vote, one of which was certain and correct, and one false, the holder of the bond might reject the false and rely on the correct one. The rule is in such case *ex multitudine signorum colligitur identitas vera.*

But here we have but *one* reference to or description of the vote on which the bonds were issued, and it can not be rejected by virtue of the maxim stated. If it be said the bonds would be good without this recital, I answer that the holder has no right to reject it. He accepted the bond as it is. If he be allowed to reject it, he may thereby gain an advantage which belongs only to other bonds reciting a vote on the 4th of August.

The officers executing the bond indicated *their intention* by specifying the assumed vote at the date stated. And parol evidence is not allowed to prove an *intention* different from that recited. In 1 Redfield's Greenleaf on evidence it is said:

"It seems to be well settled that the rule excludes *all evidence of intention* whether direct or inferential." Sect. 282 *a*.

The rule which permits in certain cases parol evidence to contradict or explain recitals is subordinate to that which excludes parol evidence as to intention, and can not be applied where, as in this case, it might encroach upon the rights of the holders of other bonds. Their rights would *estop* the holder of the bond now in controversy from averring an error in its recital. 1 Greenl. Ev., Sect. 285.

The result is that the bond in this action is void unless the recital therein of an election when none ever was held is conclusive evidence of the fact, and that can not be as has already been shown, because under the statute referred to in the bond no officer is authorized to certify any evidence of such past fact, and because the statute has prescribed where the evidence shall be found, and because to so hold would give to a falsehood the potency of legislative power, and subvert the constitutional provision which reposes all legislative power in the General Assembly.

PROPOSITION VIII.

It is reversible error for the judge of an inferior court in charging a jury in the trial of an issue of fact, to assume the existence of a disputed material fact in issue.

The record shows that one of the disputed questions of fact on the trial in the Circuit Court was whether an election was held in August, 1866.

The judge charged the jury that "the election held in August, 1866, as detailed in the evidence, was validated by the act of February 28, 1867," etc. This charge *assumes* a controverted fact and instructs the jury accordingly. The objection to this may be technical, but a technical objection is as good as any other if well taken. And if such objection be technical, it is one nevertheless on which courts have reversed judgments.

In *Noland vs. The State*, 19 Ohio R. 131, the Court held that:

"It is error in the Court to charge the jury that the evidence of an accomplice is corroborated by the testimony of another witness—whether it be corroborated or not being a question for the jury."

And for this error sentence was reversed.

Tracy vs. Swartwout, 10 Peters 80.

U. S. vs. Lamb, 12 Pet. 1.

Gaines vs. Stiles, 14 Pet. 322.

All of which is respectfully submitted,

WM. LAWRENCE,
of Counsel.

APPENDIX.

OPINION of the Supreme Court for the Northern Grand Division of the State of Illinois, in a cause submitted at a term thereof, begun and held at Ottawa, on Tuesday, the twelfth day of September, in the year of our Lord one thousand eight hundred and seventy one.

Present, CHARLES B. LAWRENCE, Chief Justice.
PINKNEY H. WALKER, Justice. SIDNEY BREESE, Justice.
JOHN M. SCOTT, Justice. WILLIAM K. MCALLISTER, Justice.
ANTHONY THORNTON, Justice. BENJAMIN R. SHELDON, Justice.
WOODBURY M. TAYLOR, Clerk.

OPINION FILED JANUARY 22, 1872.

EPHRAIM MARSHALL, *et al.*,
vs.
EDWARD C. SILLIMAN, *et al.*,
} *Appeal from Knox.*

No. 459.

Opinion by Lawrence, C. J.

ON the 5th of March, 1867, the legislature passed an act incorporating the Dixon, Peoria and Hannibal Railroad Company. The sixth section authorized townships, through which the road might pass, to take stock therein, not exceeding thirty-five thousand dollars for each township. The question of subscription was to be submitted to a vote of the people, which was to be taken upon a petition, signed by twenty-five legal voters, being presented to the town clerk, who was thereupon to give twenty days' notice of the time and place of holding the election. Under this law a petition was presented to the supervisors of Brimfield Township, in the County of Peoria, dated July 9, 1868, signed by twenty-five legal voters, and asking that an election be held on the 3d of August following, to vote upon a subscription of $35,000 to the stock of the road. The petition proposed that the subscription should be upon condition that the road should be graded, bridged and tied, within the limits of the town, by January 1, 1871, and that the bonds should be issued, 15,000 when the road should be graded, and 20,000 when bridged and tied—the bonds to be payable in ten, fifteen and twenty years. The election was held, and the vote was in favor of the subscription.

On the same day, with this vote, another was taken to determine whether the town should subscribe $15,000 in addition to the $35,000. The

only authority for taking this vote was derived from the provisions in Article 4 of the township organization law, in regard to special town meetings. This vote also resulted in favor of taking the additional stock.

On the 9th of March, 1869, the legislature amended the charter of the company, and authorized towns to take stock to the amount of $100,000. Acting under this amendment on the 13th of April, 1869, another petition for an election, signed by twenty-five voters, was presented to the supervisor, proposing an additional subscription of $25,000, with conditions somewhat similar to those annexed to the first petition. Notice was posted on the same day, and on the 4th of May the vote was taken, with the same result as before, and subsequently the town issued its bonds for $75,000, and subscribed to the stock for that amount, being the total of all the sums for which a vote was taken.

The bill in this case was filed by certain tax-payers of the town, to enjoin the railway company from negotiating the bonds, and the county treasurer from collecting the taxes assessed for payment of interest. The taxes sought to be enjoined are the first that have been assessed for this purpose. On the hearing the Circuit Court dismissed the bill. Before considering separately the different proceedings upon which these bonds were issued, we will refer to one objection going to the validity of all the bonds. It is very earnestly argued that all acts of the legislature giving to municipalities the power to take stock in railroad companies and issue bonds therefor are unconstitutional.

In regard to this we desire only to say that it can no longer be considered an open question in this Court. As to the future, our new constitution has removed this subject from the domain of controversy. As to the past, the decisions of this Court, beginning with the case of Prettyman *vs.* Tazewell County, 19 Ill. 406, and repeated in numerous cases since that time, have solemnly affirmed the validity of these acts. Under these decisions, and in consequence of them, the counties, towns and cities of the State have issued bonds, amounting in the aggregate to many millions, and these have gone into the hands of *bona-fide* purchasers all over the commercial world. If, under these circumstances, this Court were to reverse its decisions and thereby destroy the value of this immense amount of property, nay, if we were to treat the question as one admitting of discussion, we should show but a poor appreciation of the responsible duties of our office.

If the question were a new one we know not to which side our deliberations might incline us; but the highest considerations of justice require us to follow, unhesitatingly, decisions which have drawn after them consequences so important. They have the peculiar sacredness which attaches to decisions that have become established rules of property. Indeed, we could probably pronounce no judgment affecting the title to realty, that would cause such loss to persons acting on the faith of former decisions, as the one we are now asked to render.

The legislature can repeal a statute without disturbance of vested rights, for such repeal acts only upon the future. But a reversal of a judicial decision acts upon all the past and sweeps away all the rights acquired upon faith in a rule declared by the Court of last resort to be the law. Hence the doctrine of *stare decises* and no case could more cogently demand its application than the one before us.

We decline, therefore, to consider the argument upon this point, remarking, however, that the former decisions of this Court are in accord with those made by the highest courts of almost every State in the Union.

We proceed to the consideration of these different votes.

There are but two objections taken to the vote for the $35,000. They

are: first, that the notice of the vote or election, given by the supervisor, did not specify the conditions above stated, named in the petition to him, signed by the twenty-five voters on which they proposed to have the bonds issued; and, second, that the vote for the $15,000 was held at the same time. Neither of these objections has any validity. The law merely required the supervisor, upon petition, to give a notice, and this he did. It is true, the public might have inferred from the notice that the vote was to be upon the issue of bonds, without conditions for the protection of the township. If that were so, the effect would simply have been that more persons would be induced to go to the polls for the purpose of defeating the project than would have gone if the notice had specified the conditions. If the notice had specified them, and they had been subsequently disregarded, there might have been excellent ground of complaint. But the notice was in a form best adapted to draw out all the opposition to the proposed vote, and if the conditions were observed in issuing the bonds, as we presume they were in the absence of objection on that ground, the tax-payers have no cause for complaint. Their interests have been guarded in a greater degree than the notice of the vote indicated they would be, in case there should be a majority for subscription.

As to the other objection, we do not see what bearing the separate vote for the $15,000 had upon the vote for the $35,000, or how it affected the validity of the latter.

As to the vote for the $15,000, it is not claimed by counsel for appellee that it was valid at the time. The charter authorized $35,000, and only that sum, to be subscribed by the town, and the vote upon this was to be taken in a manner specially pointed out. That mode was adopted in reference to the vote for that sum. But the vote for the $15,000 was simply a vote at a special town meeting, called on the application of twelve voters, under the general township organization law, and conferred no authority whatever on the township authorities to hold this election. It was an utterly void proceeding. The town had no power to take railway stock and issue railway bonds independently of legislative action, and this vote could give none. The law limited the stock to $35,000.

It is, however, insisted by appellee that an act of the legislature, passed April 17, 1869, made the election and the bonds issued thereunder valid. That act is as follows, and will be found in Vol. 3 of Private Laws of 1869, page 372:

"Section 1. Be it enacted by the people of the State of Illinois represented in the General Assembly, that a certain election, held in the Township of Brimfield, in Peoria County, on the third day of August, 1868, at which a majority of the legal voters in said township in special town meeting, voted to subscribe for and take fifteen thousand dollars of the capital stock of the Dixon, Peoria and Hannibal Railroad Company, over and above the amount authorized to be taken by the charter of said company, is hereby legalized and confirmed, and is declared to be binding upon said township, and may be collected from said township in the same manner as if said subscription had been made under the provisions of said charter."

This law, if valid, had the effect of creating a debt of $15,000 against this township. It declares that the subscription is binding and may be collected from the township in the same manner as if it had been legally made. Before the passage of this act it was not binding, and could not be collected. If it is now binding, it became so for the first time at the passage of this law, and is so solely by force of the law. The question, then, whether the subscription is binding does not depend merely upon whether the legislature can pass a retrospective law, but upon whether it can create

a debt against a town, and require the town to assess a tax for its payment.

That this is the real question can not be denied. It can not be said that the town has even consented to the creation of this debt. The so-called vote was an idle form. Persons opposed to the subscription were under no necessity or obligation to vote against it, because they had a right to regard the entire proceeding as a nullity. The vote can no more be accepted as the action of the town, or as giving the consent of the town to the creation of this debt, than would a resolution adopted by the same number of persons, at one of their dwellings, or in a casual encounter at a street corner. Neither can the subsequent issue of the bonds on the 5th of May, 1869, be taken as showing the assent of the town. That was the mere ministerial act of the supervisor and clerk, performed in obedience to the act of the legislature.

We come, then, to the question whether the legislature can create a debt against a municipal corporation for municipal purposes and subject it to a tax for its payment without its consent. Our new constitution expressly prohibits this for the future, and the decisions of this Court substantially hold that it could not be done under the constitution of 1848. The 5th Section of the 9th Article of the Constitution of 1848 provides that "The corporate authorities of counties, townships, school districts, cities, towns and villages, may be vested with power to assess and collect taxes for corporate purposes; such taxes to be uniform in respect to persons and property within the jurisdiction of the body imposing the same."

In Hamard *vs.* The St. Clair and Monroe Levee Drainage Co., 51 Ill., we held this clause was an implied limitation upon the power of the legislature to grant the right of corporate taxation to any but the corporate authorities. In the subsequent case of The People *ex rel.*, etc. *vs.* The Mayor of Chicago, Ib. 30, we went further and held that although there might be cases where the legislature, without the consent of the corporate authorities, might impose taxes, local in their character if required by the general good government of the State, because such taxes would not be for corporate purposes merely; yet the legislature could not compel a municipal corporation, against its own will, to issue bonds or incur a debt for a merely corporate purpose, like the creation of a public park or other local improvement. In the last cited case the precise question under consideration was fully considered, and it is unnecessary to repeat what was there said. See also Nepler *vs.* Drainage Co., 53 Ill. 110, and Livingston *vs.* Wider, Ib. 302. These cases show it to be the settled doctrine of this Court that under the constitution of 1848 the legislature could not compel a municipal corporation to incur a debt for merely local purposes, against its own wishes, and this doctrine, as already remarked, has received the sanction of express enactment in our existing constitution. That was the effect of the curative act under consideration, and it was therefore void.

It is said, however, by counsel for appellee that the legislature might have authorized the town supervisor and town clerk as the corporate authorities of the town to subscribe to the stock of this road and issue township bonds therefor, without a vote of the people, and that the curative act is to be considered as giving them that power which they have duly exercised. The case of the Town of Keithsburg *vs.* Tuck, 34 Ill. 420, is cited in support of this position.

It was said in that case that the legislature might grant that power to the trustees of a town, if it thought proper to do so, without taking a vote of the people. We do not dissent from that position, but it does not aid the appellee in the present case. The town supervisor and clerk who issued these bonds do not represent a township, as the board of trus-

tees represent an incorporated town, or the Common Council represent a city. The supervisor and clerk are but a part of the corporate authorities. They have no power of taxation, no power of themselves to bind the city in any way. The case of Livingston *vs.* Wider, *supra*, may again be cited. We said then that the police commissioners were not the corporate authorities of East St. Louis as they had not been elected by the people of the city, nor appointed in any manner to which the people had given their consent, and therefore the legislature could not give them the power of taxation by creating a debt binding upon the city. So if the supervisor and clerk, though elected by the people, they were not elected for the purpose of creating a debt or imposing a tax, and the legislature could not clothe these two officers, without the consent of the people, with a discretionary power of taxation or of creating a debt because they were not, by themselves, the corporate authorities, in the sense of the constitution.

But even if these two officers could be recognized as the corporate authorities they can not be said to have voluntarily incurred this debt on behalf of the town. The act gave them no discretion. It declares the subscription shall be binding and may be collected. It did not authorize the corporate authorities to subscribe to the stock or not, as they should think proper, but declared that an illegal vote should be a valid subscription, and left to the town authorities only the ministerial function of executing the behest of the legislature.

Counsel for Appellees claim that this case is like that of Congill *vs.* Lang, 15 Ill. 202. There is, however, a broad distinction. The tax in that case was a valid tax, and when the Court say in their opinion that it was improperly voted in July, they evidently mean merely that it was improperly voted in that month for the purpose of collection during the current year. The tax was legally imposed, and the only question decided by the Court was that the subsequent act of the legislature legalizing the steps by which the tax was illegally certified to the County Court and placed in the course of collection during that year was so far effectual that the tax could be collected by virtue of the act. The act dealt with a subject entirely under the control of the legislature, namely the subject of remedy. The question before the Court was very different from the ratification of a void tax by retrospective legislation, which the legislature could not, of its own power, impose prospectively.

Our conclusions are that the so-called curative act was a violation of the constitution. Its object was to compel this town to issue its bonds for railroad stock independently of its own wishes, and this was beyond the limits of legislative power. It sought to accomplish this by declaring that a void proceeding was a valid one, that a vote confessedly illegal was in fact legal. But this vote was an accomplished fact. Whether it was within the corporate powers of the town and binding upon its people was a question which no subsequent legislation could affect, and when the legislature undertook to say that this vote created a valid obligation against the town, when it did not, it was attempting, by its own act, to create a corporate debt. So far as the tax was assessed for the payment of interest on the bonds for 15,000, which we understand from the record were a distinct issue, it should have been enjoined, and if the bonds have not been negotiated, the company should be required to surrender them.

The objections taken to the vote for the last subscription of $25,000 are not valid. The town had in the meantime been authorized to subscribe to the amount of $100,000, and this last subscription was in substantial compliance with the law. It is objected that the petition to the supervisor to call the meeting did not specify the day when the meeting should be called,

as required by the law. We consider that provision of the act as merely directory and immaterial. If the notice posted by the supervisors set forth the time and place for holding the election, it was certainly of no consequence that the date was left blank in the petition. It would be difficult to fix the day, in that as twenty-five signers had to be procured, which might be the work of considerable time. As the petition was merely presented to the supervisor to authorize him to act, we can not discover any importance to be attached to the absence of a date for the meeting. It was sufficient if stated in the notice.

We are of opinion that the subscription and bonds were valid as to the $35,000 and the $25,000, but not as to the $15,000.

Reversed and remanded.

Walker, J. I fully concur in all that is said in reference to the constitutional power of the town to vote the subscriptions. But inasmuch as the present holders of the bonds are not parties to the bill, and as they have a direct interest in the tax sought to be enjoined, I think the decree of the Court below should be affirmed for the want of parties. I therefore refrain from the expression of any opinion as to the regularity or validity of the election or the issue of the bonds, and think the decree should be affirmed.

I, Woodbury M. Taylor, clerk of the Supreme Court for the Northern Grand Division of the State of Illinois, do hereby certify the foregoing to be a true copy of the final opinion of the said Supreme Court in the above entitled cause, of record in my office.

{ SEAL }

IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of the said Supreme Court, at Ottawa, this twenty-second day of May, in the year of our Lord one thousand eight hundred and seventy-two.

W. M. TAYLOR, *Clerk of the Supreme Court.*